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AVIATION CONSUMER ISSUES: EMERGENCY CONTINGENCY PLANNING AND OUTLOOK FOR SUMMER TRAVEL

(111–36)

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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May 18, 2009

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Aviation

FROM: Subcommittee on Aviation Staff

SUBJECT: Hearing on "Aviation Consumer Issues: Emergency Contingency Planning and Outlook for Summer Travel"

PURPOSE OF HEARING

The Subcommittee on Aviation will meet on Wednesday, May 20, 2009, at 2:00 p.m., in room 2167 of the Rayburn House Office Building to receive testimony regarding aviation consumer issues, focusing on emergency contingency planning and outlook for summer travel.

BACKGROUND

In Fiscal Year (FY) 2007, U.S. airlines set an annual record by carrying 765.3 million scheduled domestic and international passengers. In FY 2008, this declined to 757.4 million.[1] The Department of Transportation's Inspector General (DOT IG) reported that unprecedented fuel prices in the first three quarters of 2008, coupled with the recession, impacted the airline industry with $5.8 billion in operating losses and bankruptcies. In response, airlines began to cut capacity, and "by November 2008, airlines had implemented capacity cutbacks that eliminated roughly 13 percent of domestic scheduled flights" as compared to November 2007.[2] Capacity cutbacks have meant reduced flight frequencies, elimination of smaller aircraft, and ceasing some flight operations.[3] It is predicted that system capacity, as measured in available seat miles (the number of seats

[1] Federal Aviation Administration (FAA), Aerospace Forecast Fiscal Years 2009-2025 64 (The 2008 number is an estimate. Numbers are measured in revenue passenger enplanements in millions for U.S. commercial air carriers for scheduled U.S. passenger traffic.)
[2] DOT IG, Aviation Industry Performance: A Review of the Aviation Industry in 2008 4 (2009).
[3] *Id.* at 4.

multiplied by the distance traveled), for domestic and international aviation will decline by 6.7 percent in 2009, after a 1.2 percent increase in 2008.[4] FAA forecasts that domestic capacity will be reduced by 9 percent in FY 2009.

The DOT IG reported, "Airlines responded to the dramatic shift in their operating environment by cutting flights, raising airfares, and tapping into ancillary sources of revenues."[5] Airports have also been affected—small community, or non-hub, airports were impacted the most by capacity cuts, with a 16 percent decrease in available seat miles from November 2007 to November 2008.[6] The FAA forecasts that declines in activity in the near term will give way to returned growth in the long term.[7]

Another issue that is affecting the airline industry in the short term is the outbreak of the novel influenza A (H1N1). The influenza started in Mexico in April 2009 and spread via human-to-human contact throughout Mexico, the United States, and other foreign countries. Many worried that a large part of the population would be susceptible to contracting novel H1N1 flu and that it would spread rapidly. On April 28, the Centers for Disease Control and Prevention (CDC) recommended that U.S. travelers delay nonessential travel to Mexico, and the World Health Organization (WHO) soon thereafter recommended that ill individuals should delay air travel.[8] In response to fears about contracting the flu from the confined area of an airplane, and the travel advisory for Mexico, many airlines cut flights to Mexico and waived change ticket fees. Continental Airlines and US Airways cut departures to Mexico by as much as 40 percent and Delta, United, and JetBlue also some cut service.[9]

I. Consumer Issues and Airline Delays

With the decline in air traffic from capacity cuts, airline delays similarly declined. According to the DOT IG, "[f]or the second half of 2008, the number of delays was 24 percent lower than the same period in 2007."[10] Despite the system-wide decline in delays, large hub airports that are notorious for being system "chokepoints" continued to be problematic. In the summer of 2008, delays at San Francisco International (SFO) increased by 6 percent and Newark Liberty International (EWR) by 0.4 percent as compared with the summer of 2007. Delays only decreased by 5 percent each at John F. Kennedy International (JFK), LaGuardia Airport (LGA) and Chicago O'Hare (ORD), as compared to the previous summer; as opposed to 11 percent nationwide.[11] Recent decreases in capacity corresponding traffic will likely continue through the summer, meaning that overall, delays are projected to remain low system-wide. However, major "chokepoints" of the New York area, Chicago, and Atlanta, will continue to experience high rates of delays.

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[4] *Id.*

[5] DOT IG, *supra* note 2. Many carriers have unbundled their passenger fares by adopting an "a la carte" pricing plan, which includes fees for checked baggage, beverages and specific seats. According to BTS, airlines collected $1.1 billion in excess baggage fees (any passenger baggage that is not transported free-of-charge) in FY 2008.

[6] DOT IG, *supra* note 2, at iii.

[7] FAA, *supra* note 1, at 5.

[8] WHO, http://www.who.int/csr/disease/swineflu/frequently_asked_questions/travel/en/index.html (last visited May 9, 2009). On April 29, the WHO raised the pandemic threat level of H1N1 to phase 5, meaning that a pandemic is imminent and the time to finalize the organization, communication, and implementation of mitigation measures is short.

[9] Melanie Reffes, *More Carriers Trim Mexico Service In Response to Swine Flu Outbreak*, Aviation Daily, May 5, 2009, at 1-2.

[10] DOT IG, *supra* note 2, at 16.

[11] DOT IG, *supra* note 2, at 9, 17.

According to the Bureau of Transportation Statistics (BTS), approximately 24 percent of flights were delayed or cancelled in 2008, slightly lower than 26 percent in 2007. Through March 2009, about 20 percent of flights were delayed or cancelled – the lowest level since 2003.[12] In 2008, there were 7,150 flights with taxi-out times (the time elapsed between departure from the origin airport gate and wheels off) of two hours or more and 1,232 of three hours or more out of approximately 7 million flights.[13]

In response to a 1999 extended on-board delay in Detroit, and subsequent calls for legislative action, members of the Air Transport Association (ATA), representing the major airlines, sought to improve customer service. ATA drafted an "Airline Customer Service Commitment, whereby signatory carriers agreed to develop individual Customer Service Plans to demonstrate ongoing dedication to improving air travel."[14] The Commitments included: notifying customers of known delays; cancellations and diversions; on-time baggage delivery and return of "lost" bags within 24 hours; properly accommodating disabled and special needs passengers; meeting customers' essential needs during long on-aircraft delays; handling "bumped" passengers with fairness and consistency; disclosing travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration; ensuring good customer service from code-share partners; and being more responsive to customer complaints.

The DOT IG assessed airlines' progress in implementing the Commitments in 2001 and found that most had incorporated them into their contracts of carriage.[15] Airlines worked on more voluntary measures to improve customer service through a task force. In a follow-up report in 2006, the DOT IG noted that airlines had fallen behind in self-auditing their customer service plans.[16]

In December 2006, thunderstorms severely impacted American Airlines' operations at the Dallas Fort Worth International Airport, diverting many flights and shutting down the airport for nine hours. On February 14, 2007, an ice storm crippled JetBlue's operation at JFK and LGA and led to nine planes being stuck for more than five hours on the tarmac, with one of those planes delayed for ten hours.

Following these incidents, former Secretary of Transportation Mary Peters asked the DOT IG to review these two recent cases and examine the airlines' customer service commitments, contracts of carriage, and policies regarding extended ground delays aboard aircraft and to provide an assessment on why the American and JetBlue delays occurred. The Secretary also requested

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[12] BTS, http://www.transtats.bts.gov/HomeDrillChart.asp (follow "2008" and "2007" hyperlinks) (last visited May 12, 2009). Data represents the 20 major carriers.

[13] BTS, http://www.bts.gov/programs/airline_information/taxi_out_and_other_tarmac_times/ (follow "2008" hyperlink next to "Taxi-Out by Carrier and Time-Blocks") (last visited May 12, 2008).

[14] JetBlue, which began service in February 2000 and became an ATA member in 2001, was not a signatory to the 1999 Commitment. However, in response to a February 14, 2007, incident, JetBlue instituted its own "Customer Bill of Rights" to address cancellations, delays and over bookings.

[15] *See* DOT IG, Final Report on Airline Customer Service Commitment (2001) (concluded that while the airlines were making some progress on a few of the commitments, there were significant areas of deficiency); Status Report on Airline Customer Service (2001).

[16] DOT IG, Follow-up Review: Performance of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment (2006).

recommendations for what airlines, airports, and the Federal Government can do to prevent such situations in the future.

In September 2007, the DOT IG recommended that the Department of Transportation (DOT) establish a national task force of airlines, airports, and FAA to develop and coordinate contingency plans to deal with lengthy delays; conduct incident investigations involving long, on-board ground delays; and to ensure that airlines comply with their public policies governing long, on-board delays. The DOT IG also recommended that airports establish a process for monitoring lengthy, on-board delays. For airlines, the DOT IG recommended they should define what constitutes an "extended period of time" for meeting passengers' essential needs; establish specific targets for reducing chronically delayed or cancelled flights; disclose on-time flight performance on websites or orally during ticket purchase; and self-audit customer service plans.

Also in September 2007, the DOT: (1) created a New York Aviation Rulemaking Committee (ARC) to explore options for addressing airspace congestion and flight delays in the three major New York-area airports; (2) improved access to DOT's complaint system, enhanced oversight of chronically delayed flights, initiated a rulemaking to increase compensation for passengers who are involuntarily bumped, and reviewed effectiveness of contingency plans for tarmac delays; (3) required the FAA to convene a schedule reduction meeting at JFK; and (4) worked to implement the New York, New Jersey, Philadelphia Metropolitan Area Airspace Redesign ("NY Area Airspace Redesign").

The goal of the ARC was to identify ways to reduce congestion in the New York area airspace and efficiently allocate the scarce capacity of the New York area airports. On December 13, 2007, the ARC's findings were submitted to the Secretary and a list of 77 operational initiatives that could potentially mitigate delays or increase efficiency in the New York area. Of these, FAA reports that 30 have been completed, 37 are "ongoing"— meaning they are either being implemented or reviewed, 7 have been folded into the Next Generation Air Transportation System (NextGen) initiatives, and 3 are dependent on NY Area Airspace Redesign. One example is the new take-off patterns at EWR and Philadelphia International Airports, which allow aircraft to fan out after taking off so that the next aircraft may take off sooner. While delays have recently declined due to decreases in traffic, the New York airspace remains a major chokepoint with significant delays that also cause a "ripple effect" system-wide. EWR has the worst on-time arrival rate in North America at 54.9 percent; and LGA's rate is 63 percent and JFK's rate is 64.3 percent.[17] Many have called for solutions to be implemented now before capacity increases once again.

The FAA's airspace redesign efforts will play a critical, near-term role in enhancing capacity, reducing delays, transitioning to more flexible routing and saving money for airlines and airspace users in fuel costs. Currently, FAA is pursuing several airspace redesign projects nationwide. Once implemented, FAA believes this effort could reduce delays by as much as 200,000 hours. An additional measure that is being implemented is flight caps, which are achieved through voluntary carrier schedule reductions. Flight caps were instituted at JFK in March 2008 and at EWR in May 2008. Under the terms of the hourly caps, airlines may shift their flights to times when airports have unused capacity rather than the overloaded peak hours. The caps are in place for two years, at which time their effectiveness will be reevaluated by the DOT.

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[17] Andrew Compart, *On-Time Streak Continues for U.S. Airlines in April*, Aviation Daily, May 5, 2009, at 3.

On December 8, 2008, the DOT issued a Notice of Proposed Rulemaking (NPRM) that would require air carriers to do the following: (1) adopt contingency plans for lengthy tarmac delays and incorporating them in their contracts of carriage; (2) respond to consumer problems; (3) publish delay data on their websites; and (4) adopt customer service plans, incorporate them into their contracts of carriage, and audit their adherence to the plans. It would also deem the operation of flights that remain chronically delayed to be unfair and deceptive. The comment period closed on March 9, 2009, and the DOT is proceeding towards issuing a final rule.[18]

On April 1, 2009, the DOT announced other consumer protection measures. Within 90 days, airlines must change their contracts of carriage to better inform passengers of what specific rules apply when they buy a ticket from an international code-share partner. This was done in response to a lack of clarity on issues (e.g., check-in time limits, carriage of animals, denied boarding compensation) when they buy a ticket with one airline, but the operating carrier is a code-share partner. The DOT's guidance also requires airlines to change their baggage liability policies to reflect the terms of the Montreal Convention.[19]

Contingency Planning for Lengthy Onboard Delays

As a recent reminder that lengthy tarmac delays are still problematic for passengers, on April 10, 2009, Delta Flight 510 was enroute to Atlanta, Georgia from Turks and Caicos, and was diverted to Columbia, South Carolina due to severe thunderstorms. After refueling and waiting to depart, another round of thunderstorms hit Atlanta, causing another delay. At that point, the crew had reached their maximum flight and duty time limits and the airline requested that Customs and Border Protection (CBP) allow them to deplane. CBP allowed passengers to deplane two hours after Delta's request, and took passengers to a waiting area. In sum, the plane was delayed on the tarmac for over five hours before passengers could deplane.

On January 3, 2008, in response to the DOT IG's 2007 recommendation, the DOT convened the National Task Force to Develop Model Contingency Plans to Deal with Lengthy On-board Ground Delays (Task Force). The Task Force was comprised of airlines, airports, consumer groups, and Federal Government stakeholders. In November 2008, the Task Force issued its report on voluntary recommendations for the stakeholders to work together during lengthy delays and to develop contingency plans to ensure proper care of airline passengers.

The Task Force identified basic passenger needs that should be met during lengthy delays, which broadly includes: (1) information, including deplaning options and the ability to communicate with friends and family; (2) food and hydration; and (3) a clean environment, lavatory and special services (e.g., access to medicine). Based on this, the Task Force laid out sample plans for airlines and airports, and the coordination between stakeholders, to effectively address passenger needs in these situations. For airlines, the Task Force recommended they establish "triggers" – "specific events or points in time during a lengthy onboard ground delay when communications with

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[18] Enhancing Airline Passenger Protections, 73 Fed. Reg. 74586 (proposed Dec. 8, 2008) (to be codified at 14 C.F.R. Parts 234, 259, and 399).

[19] Providing Guidance on Airline Baggage Liability and Responsibilities of Code Share Partners Involving International Itineraries, 74 Fed. Reg. 14837 (April 1, 2009). Article 17 of the Montreal Convention states that carriers are liable for lost or damaged baggage if such action occurred while in the airline's custody, except if the destruction was as a result of a defect in the baggage.

involved stakeholders is initiated, a decision is made, or an action is taken." An example is if a crew becomes aware that the flight will be delayed after passengers have boarded but before the aircraft leaves the gate, they should provide flight status announcements to passengers no less than every 30 minutes. The contingency plan should include actions to be taken by the airline following a triggering event, during an onboard delay, and to assist passengers with deplaning.

To deplane passengers, the airline may need to work with Government agencies, other aviation service providers, and local lodging and transportation services. Federal agencies that may need to be involved in deplaning, especially for an international arrival, are Transportation Security Administration (TSA) for passenger and baggage screening, CBP for international passenger processing, and the CDC.

The Task Force recommended that airports also establish triggers by which to determine appropriate action. Airports should work with other aviation service providers to deplane passengers from remote locations; and extend hours of operation for security workers, TSA, CBP, FAA, and concessionaires.

II. Planning for Health Emergencies

In the beginning stages of the outbreak of novel influenza A (H1N1)—commonly known as "swine flu"—in late April, constant media attention, school closures, and fears about travel contributed to the public's alarm. Recently, fears have somewhat eased as the CDC recommended that schools remain open, the WHO has not increased the threat level to indicate that there is a pandemic outbreak,[20] and public officials have attempted to reassure the public that is safe to be in public spaces. Other disease outbreaks of international concern in recent years have included the Severe Acute Respiratory Syndrome (SARS) epidemic between 2002 and 2003, and the avian A H5N1 influenza ("bird flu") in 2003. SARS resulted in over 8,000 cases and 774 deaths worldwide[21] and the avian flu resulted in 423 cases and 258 deaths worldwide.[22] As of May 15, 2009, there were 4,714 confirmed U.S. cases of H1N1 with 4 deaths, affecting 47 states and territories. The WHO reports 7,520 cases in 34 countries.

Since H1N1 is spread by human-to-human contact, there was concern about contracting the disease while in a confined public space, such as an airplane. The WHO, CDC, DOT, and airlines have emphasized that it is still safe to fly and passengers should protect themselves by practicing good hygiene (e.g., wash hands frequently, use hand sanitizers, and avoid travel if sick).

The Secretary of Health and Human Services (HHS) is responsible for preventing the introduction, transmission, and spread of communicable diseases from foreign countries in the United States and from one state or U.S. possession into another.[23] HHS is the lead federal agency that is responsible for coordinating federal response and inter-agency coordination,[24] and issuing guidance to individuals and businesses that could be affected by a quarantinable disease. There are

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[20] According to Reuters, "The [WHO] kept its global pandemic alert at 5 out of 6 because the new virus was not spreading rapidly outside North America." Reuters, *Flu kills Canadian, first cases in Japan, Australia*, May 9, 2009.
[21] CDC, Factsheet: Basic Information about [SARS] (Jan. 13, 2004).
[22] WHO, Cumulative Number of Confirmed Human Cases of Avian Influenza A/(H5N1) Reported to WHO (May 6, 2009).
[23] 42 U.S.C. § 264 (2008).
[24] The Pandemic and All-Hazards Preparedness Act, 42 U.S.C. § 300hh (2007).

nine diseases that are quarantinable diseases.[25] Quarantine means "the separation and restriction of movement of persons who, while not yet ill, have been exposed to a communicable disease and, therefore, may become infectious and transmit the disease to others." The CDC has the authority to isolate and quarantine individuals or groups ill with or exposed to such a disease, including at airports. CDC Quarantine Stations are located at 19 U.S. airports and are responsible for quarantining ill passengers and providing them with medical assistance.

For airlines and passengers, the CDC is the lead agency responsible for issuing travel advisories and information on recommended actions to prevent the spread of and contain diseases. CDC also coordinates with the Department of Homeland Security (DHS), CBP, and TSA. HHS and DHS signed a Memorandum of Understanding on October 2005 to address how the agencies will share travel information and screen and handle passengers suspected of being ill. Certificated Airports are required by FAA regulations to have emergency plans. However, the emergency plans are required to address such items as aircraft incidents, structural fires, and natural disasters. They are not required to address communicable diseases or pandemics. Although not required by regulation, many large airports do have pandemic plans.[26] According to Airports Council International-North America, because airports develop plans for medical emergencies and other disasters, and have had practice dealing with health emergencies (like SARS) in the past, they are well equipped to develop contingency plans.

In the event of a pandemic threat, the CBP and TSA are responsible for "passive surveillance" of passengers for signs of "flu-like symptoms." If a passenger was suspected of being ill with novel H1N1, they would be pulled aside at airport screening to undergo "secondary" health screening by the CDC. Flight attendants also look for signs of flulike symptoms. If a passenger is suspected of flu-like symptoms while already enroute, the flight attendant notifies the pilot-in-command, who then notifies Air Traffic Control, which notifies the closest appropriate CDC Quarantine Stations for instructions. Airports and airlines have increased efforts to clean public spaces thoroughly and to provide advisory information to the travelling public. The DOT issued a National Aviation Resource Manual for Quarantinable Diseases in November 2005, in coordination with the CDC and HHS, to assist airports and aviation stakeholders in preventing the transmission of quarantinable diseases through the airline system.

During a pandemic health emergency, the WHO may recommend that countries screen at entry and exit points, including international airports. The WHO has not recommended entry/exit screenings for the novel H1N1 flu. According to the WHO, "Scientific research . . . shows that restricting travel would be of limited or no benefit in stopping the spread of disease. Historical records of previous influenza pandemics, as well as experience with SARS, validate this."[27]

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[25] Cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers, SARS, and influenza are quarantinable diseases.
[26] 14 C.F.R. § 139.325 (2008).
[27] Statement by WHO Director-General, Dr. Margaret Chan, April 29, 2009.

III. H.R. 915, the "FAA Reauthorization Act of 2009"

H.R. 915, the "FAA Reauthorization Act of 2009", contains several provisions to enhance consumer protection, decrease delays, and assist with contingency planning including:

- Mandating that air carriers and airports submit emergency contingency plans and detail in their plans how they will allow passengers to deplane following excessive delays. These plans must be approved by the DOT. The DOT can assess a civil penalty against an air carrier or airport that fails to adhere to an approved contingency plan.

- Requiring schedule reduction meetings to be held by the FAA if aircraft operations of air carriers exceed hourly maximum arrival and departure rates and are likely to have a significant adverse effect on the national or regional airspace system. If there is no agreement to reduce schedules, then the FAA shall use its administrative power in this area.

- Establishing an Advisory Committee for Aviation Consumer Protection in the DOT that is required to report annually on its recommendations.

- Reviewing air carrier flight delays, cancellations, and associated causes by the DOT IG.

- Requiring the DOT to issue denied boarding compensation final regulations within one year, with such rates appropriately adjusted.

- Directing the Comptroller General to study delays in the delivery of checked baggage to air carrier passengers and making recommendations for establishing minimum standards to compensate a passenger in the case of unreasonable delays, taking into consideration that many carriers are charging additional fees for checked baggage.

- Requiring air carriers to include on their websites and electronic tickets or boarding passes the DOT consumer complaint hotline number, and the email, phone number, and address for the DOT Aviation Consumer Protection Division and the air carrier.

- Requiring the Secretary of Transportation to establish and make available to the public a list of countries that require an air carrier to treat aircraft passenger cabins with insecticides prior to the flight or to apply an aerosol insecticide when the cabin is occupied with passengers.

- Requiring that an airport used by an air carrier or foreign air carrier for flights in foreign air transportation provide for the use of the airport's terminal, to the maximum extent practicable, for the processing of passengers arriving at the airport on such a flight in the case of an excessive tarmac delay.

HEARING ON AVIATION CONSUMER ISSUES: EMERGENCY CONTINGENCY PLANNING AND OUTLOOK FOR SUMMER TRAVEL

Wednesday, May 20, 2009,

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Subcommmitee met, pursuant to call, at 2:33 p.m., in Room 2167, Rayburn House Office Building, the Honorable Jerry F. Costello [Chairman of the Subcommmitee] presiding.

Mr. COSTELLO. The Subcommmitee will come to order. The Chair will ask that all Members, staff, and everyone turn electronic devices off or on vibrate.

The Subcommmitee is meeting today to hear testimony on aviation consumer issues, focusing on emergency contingency planning and the outlook for summer travel. I will give a brief opening statement and then will ask the Ranking Member, Mr. Petri, for any remarks or his opening statement. Then we will go to the first panel of witnesses.

I want to welcome everyone today to our Subcommmitee hearing on Aviation Consumer Issues: Emergency Contingency Planning and the Outlook for Summer Travel. As all of you, I think, on this panel know and many in the audience know, the Subcommmitee promised to hold this hearing some time ago. We said that in April or May we would hold a hearing on this issue. That is the reason we are here today.

The Subcommmitee continues to examine consumer issues and airline delays to provide accountability and oversight of the Department of Transportation, the Federal Aviation Administration, and the airline industry. In the 110th Congress, this Subcommmitee held a series of four hearings and one roundtable meeting on flight delays and consumer issues. Today, we will examine the progress and remaining challenges to reduce flight delays and improve airline consumer protections.

Although delay and consumer service statistics show improvement overall, we are interested in hearing from the witnesses to learn if these trends can be maintained when air travel rebounds. The downturn of the economy has had a significant impact on the airlines. Roughly 13 percent of domestic scheduled flights were cut. Airfares increased and new fees for services such as checked baggage were initiated. This led to a 10 percent decline in passengers compared to the same period in 2007. With fewer flights and less

passengers, airline delays decreased. According to the Bureau of Transportation Statistics, approximately 20 percent of flights were delayed or canceled thus far through March of 2009, the lowest level since 2003.

Despite this decline in delays nationwide, New York remains a critical choke point in the system. I have requested that the DOT Inspector General examine how the delays in the New York regional airspace affect the rest of the national airspace system. I look forward to hearing the IG's preliminary assessment today.

According to the FAA, 75 percent of delays nationwide in the summer of 2007 resulted from congestion surrounding New York. The DOT IG will report today on progress made by the FAA to implement the 77 operational and infrastructure improvements that the New York Aviation Rulemaking Committee recommended.

Today's hearing will also touch on how the aviation industry plans and reacts to health emergencies and what precautionary steps have been taken to protect passengers and those who work onboard the aircraft. This is especially important with the recent outbreak of swine flu.

The airline industry plays an important role in assisting public health officials to control the spread of communicable diseases. The outbreak of SARS and avian flu have shaped how Government agencies and airlines prepare and plan for public health emergencies to protect public health and diminish major travel disruptions.

Air travel continues to be safe despite the recent swine flu outbreak. Airports and airlines are voluntarily increasing their efforts to clean public spaces thoroughly and inform the public on the latest travel and health advisory notices. Flight attendants also play a critical role in screening passengers for flu-like symptoms and taking precautions to ensure passengers are protected from exposure to the viruses.

The hearings we held in the 110th Congress greatly shaped the consumer protection provisions incorporated in House of Representatives 915: FAA Reauthorization Bill of 2009. Tomorrow, the House of Representatives will consider this legislation. I will look forward to working with our friends in the other body to pass a final bill that includes strong consumer protections.

With that, I again want to welcome all of you here today. I especially welcome our witnesses. I look forward to hearing your testimony.

Before I recognize Mr. Petri for his opening statement, I ask unanimous consent to allow two weeks for all Members to revise and extend their remarks, and to permit the submission of additional statements and materials by Members and witnesses. Without objection, so ordered.

At this time, the Chair recognizes the Ranking Member of the Subcommmitee, Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman. I am also pleased to welcome our witnesses here today as we again consider airline congestion and consumer services.

Since the last Subcommmitee hearing on this topic, the airline industry has changed dramatically. First, due to the high price of fuel last spring and summer, airlines were forced to make signifi-

cant capacity cuts at the end of last summer. Second, airlines have been dealing with a steep drop off in demand, as has the rest of the economy, caused by the current economic downturn. The result has been a dramatically contracted industry.

With the contraction of the airline industry, there has been a corresponding decrease in delays across the national airspace system. According to statistics offered by the Department of Transportation Office of Inspector General, delays nationwide have decreased an average of 19 percent. Almost every statistical metric collected by the Department portrays an industry with better on time performance and customer satisfaction.

However, it is my understanding that the Nation's busiest airports, the hubs of the air transportation network, have not seen as dramatic a decrease in traffic nor the corresponding reduction in delays. I am interested in hearing from the Inspector General about what steps the FAA is taking to address these persistent choke points.

Last year the FAA identified 77 initiatives that in conjunction with the New York Airspace Redesign project would help unlock the New York airspace. I am interested in hearing about the FAA's progress in implementing these initiatives, as well as the Inspector's General assessment of whether or not these initiatives effectively address congestion problems.

Also, I am interested in hearing about the progress of the Department of Transportation rulemaking now underway to address consumer protections. Last Congress, this Subcommmitee worked in a bipartisan fashion to address consumer protections in the FAA Reauthorization Bill. I am pleased that those provisions are a part of the Reauthorization Bill to be considered on the Floor this very week.

We all understand that weather is the wild card factor in aviation and there is not much we can do about it. But there are improvements that can be made in the near term to help avoid frustrating delays. We are witnessing a system in desperate need of new, advanced technologies in the air and increased capacity on the ground. If history is any guide, passenger demand and increased traffic will rebound with the economy. The FAA must use this lull as an opportunity to get ahead of the next crisis. While NextGen will offer some efficiencies, it alone will not solve congestion. Initiatives undertaken by the stakeholders to address this dilemma sooner rather than later are critical to get out of this problem so that we may prevent future aviation travel problems.

Both the Government and industry witnesses will provide an update on the initiatives they have implemented since our last hearing on this topic. I am also interested in hearing exactly what impact they predict these efforts will have on the traveling public this summer.

With that, I thank the Chairman and look forward to the witnesses' testimony.

Mr. COSTELLO. The Chair thanks the Ranking Member.

Let me introduce our first panel of witnesses, but let me make an announcement before I do. The Rules Committee will be meeting in just a few minutes to hear testimony from Chairman Oberstar, Ranking Member Mica, Mr. Petri, and myself so Mr. Petri and

I will be leaving to go to the Rules Committee. A number of amendments have been filed and we are going over to testify on the bill and on the rule before the Rules Committee. I have asked the gentleman from Iowa, Mr. Boswell, to Chair the hearing until we can return, if in fact we get done in that period of time before you are finished with this hearing. He has graciously offered to Chair this hearing.

Let me introduce the witnesses. I will ask to begin the testimony as we, Mr. Petri and I, have to depart.

But we welcome Ms. Christa Fornarotto, the Acting Assistant Secretary for Aviation and International Affairs with the U.S. Department of Transportation. She used to be a member of this staff and was my Legislative Director for nine years before going to the Department of Transportation. So we welcome her back before the Subcommmitee. We make a commitment that we are going to have you back often.

Ms. Nancy LoBue is the Acting Assistant Administrator for Aviation Policy, Planning, and Environment with the FAA.

The Honorable Calvin Scovel, III is the Inspector General for the U.S. Department of Transportation. He has testified before this Subcommmitee many times and has done excellent work for this Subcommmitee and for our Country.

With that, the Chair would remind our witnesses that your entire statement will be entered into the record. We would ask you to summarize your testimony in five minutes. With that, the Chair recognizes Ms. Fornarotto.

TESTIMONY OF CHRISTA FORNAROTTO, ACTING ASSISTANT SECRETARY FOR AVIATION AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION; NANCY LOBUE, ACTING ASSISTANT ADMINISTRATOR FOR AVIATION POLICY, PLANNING, AND ENVIRONMENT, FEDERAL AVIATION ADMINISTRATION; AND CALVIN L. SCOVEL, III, INSPECTOR GENERAL, U.S. DEPARTMENT OF TRANSPORTATION

Ms. FORNAROTTO. Mr. Chairman, Congressman Petri, and Members of the Subcommmitee, thank you for inviting me to this hearing. I appreciate the opportunity to discuss with you and the Subcommmitee aviation consumer issues. Specifically, I will be discussing the status of our current consumer protection and regulatory compliance initiatives, and our work in coordination with other Federal agencies in connection with the H1N1 outbreak.

In 2007, complaints by airline consumers filed with the Department spiked sharply. This spike was in part due to the deteriorating on time performance and incidents in December 2006 and February 2007 in which passengers onboard many aircraft were stranded for hours on airport tarmacs while waiting for their flights to take off.

Over the last two years, however, data reported to the Department show improvements in the quality of air service. For example, for the first quarter of 2009, air service complaints were down 30 percent compared to the first quarter of 2008 and down 25 percent compared to the first quarter of 2007. In another example, for the first quarter of 2009, the on time performance rate was 79.2 per-

cent compared to the 70.8 percent rate during the first quarter of 2008 and the 71.4 percent rate during the first quarter of 2007.

Although these statistics show a trend in the right direction, they do not necessarily indicate that the underlying problems that they measure are being solved. Rather, much of the improvement may be attributable to capacity cuts by the airlines. With this in mind, the Department is committed to protecting consumers and ensuring that the quality of air service continues to improve even when airlines return to adding capacity as the economy recovers.

We believe that consumers are entitled to strong and effective protections when traveling by air. We believe more can and will be done. In particular, we are focused on a notice of proposed rulemaking issued last December proposing to enhance airline passenger protections. It suggests (1) designating the operation of a chronically delayed flight as an unfair and deceptive practice, (2) requiring carriers to adopt contingency plans for lengthy tarmac delays and to incorporate them into their contract of carriage, as well as (3) having customer service plans and incorporating them into their contract of carriage. Finally, it suggests an audit of their compliance with their plans.

While I cannot discuss the specific issues involved in an active rulemaking before the Department, we are currently evaluating the NPRM and the comments filed in response to it. We will determine the next steps associated with this NPRM once we are through with our evaluation.

Regarding the H1N1 flu outbreak, let me start by reiterating earlier comments by Secretary LaHood: It is safe to fly. One of the reasons it is safe to fly is that the Department of Transportation, together with several other Government agencies, has been working hard to ensure that our aviation system is prepared to handle the kinds of concerns raised by the recent H1N1 outbreak. Specifically, the Department has been participating for several years in a Pandemic Planning and Preparedness Working Group led by the Homeland Security Council. Consequently, when H1N1 broke out, a response scheme was already in place and we were ready to take immediate action.

The planning components and exercises previously conducted by the Department ensured that DOT staff could rapidly and appropriately respond to H1N1 as the situation warranted. Over the weeks following the initial outbreak, the measures taken and the communications initiated were scaled up and then down as more information about the virus became available.

In closing, Mr. Chairman, I again want to reiterate that the Department is committed to protecting consumers. We look forward to working with Congress and all stakeholders to achieve this goal. Thank you for the opportunity to testify today. I will be happy to answer any questions or comments you may have.

Mr. BOSWELL. [Presiding] Thank you. Ms. LoBue?

Ms. LOBUE. Chairman Costello, Ranking Member Petri, Members of the Subcommmitee, and Mr. Boswell, thank you very much for having me here today to discuss the outlook for the summer travel season.

I appreciate this Committee's concern about congestion and delays. No one wants a repeat of the summer of 2007. That is why

NextGen is the necessary technology leap that expands capacity to meet demand. It improves the passenger experience while enhancing safety and it reduces congestion, noise, and emissions.

Even in the face of falling passenger demand and a reduced number of airline flights, we still experience congestion in our busiest airspace. We know that we must be poised to handle demand that will surely return as the Nation's economy improves. Secretary LaHood has made clear that accelerating NextGen is a key priority for him and this Administration. We appreciate the support that this Committee as well as Congress as a whole has given us as we move forward with NextGen.

Nationwide, the FAA has been putting a range of solutions into place. New runways provide significant capacity and operational improvements. As you know, we opened three new runways in November at Seattle, Dulles, and O'Hare. We also completed a runway extension at Philadelphia in February. We have several other runway projects in development over the next several years to increase capacity and reduce delays for the flying public.

The FAA has been highly proactive in anticipating and planning to reduce delays nationally. We began our summer 2009 planning last October. We have met with the air carriers and other stakeholders. We are monitoring airline schedules six months into the future. We are ready to respond with congestion action teams to any airports where schedule increases appear likely to increase delays significantly.

We have already seen these improvements pay dividends. Last summer, we saw improvements in delays over the summer of 2007. In New York, on time performance, average total delays, and the number of operations with long delays all improved in the summer of 2008 compared to the summer of 2007. As we gear up for the summer of 2009, we are continuing our work on implementing measures to minimize delays.

Summer thunderstorms typically mean increased delays but we expect on time performance to be higher nationally than last summer with the reduction in flights by the airlines. Despite the downturn in traffic, FAA is continuing to work aggressively to implement operational and structural improvements so we are prepared to handle the uptick of traffic in the future.

Now in New York, we haven't seen the same volume of downturn in either traffic or delays. We are also anticipating some impact on operations caused by various runway construction improvements. The Port Authority of New York and New Jersey is working on construction projects at JFK that will ultimately have delay benefits closed a runway there for the past few weeks and will close another runway there for much of next summer. Planning for that process is underway on how to mitigate delays. We will be reaching out further to the airport and other stakeholders as we move forward.

In response to New York's unique situation, the FAA maximizes the use of airspace, especially in congested areas such as New York, through targeted airspace and procedure enhancements. For example, we are using RAPT, the Route Availability Planning Tool, to better work around bad weather to reduce delays this summer. We have also limited scheduled operations at LaGuardia, JFK, and

Newark. In our ongoing efforts to reduce delays, the FAA plans to continue to keep the limits on scheduled operations in place at the New York airports while this Administration continues to consider its next steps with regard to long term congestion management programs.

While we have a strong focus in New York because of its impact on the rest of the NAS, we continue to work to improve the safety and efficiency of the entire system nationwide.

Mr. Chairman, Ranking Member Petri, Mr. Boswell, and Members of the Subcommmitee, this concludes my prepared remarks. I would be happy to answer any questions you might have. Thank you.

Mr. BOSWELL. Thank you. Mr. Scovel?

Mr. SCOVEL. Chairman Costello, Ranking Member Petri, Mr. Boswell, and Members of the Subcommmitee, I appreciate the opportunity to testify on the progress and challenges with the Department's and FAA's efforts to reduce flight delays and improve airline customer service.

Since we last testified on this subject in April 2008, the aviation landscape has significantly changed as evidenced by flight cutbacks and new fees. The industry will continue to face uncertain times as airlines and airports respond to the economic downturn. This summer, while air travelers will likely see fewer delays due to reduced flight operations and other factors, they will also have fewer choices with respect to scheduled flights and destinations.

In my statement today I will highlight three key points related to delays and customer service, the reasons for last year's reductions in delays, initiatives that can further reduce delays, and welcome progress in airline customer service.

First, we saw reductions in delays from 2007. The decrease in delays was primarily driven by cutbacks in flights that airlines implemented in response to last year's spike in fuel prices and the softening economy. In addition, we saw changes in flight scheduling practices, with airlines increasing the time between arrival of an aircraft at an airport and its next departure. This increase in the turnaround time allows the airline to absorb inbound delays and minimizes the delay of subsequent flights.

While overall air travel delays have improved, high levels of delay continue at larger congested airports such as Newark, JFK, and LaGuardia. Delays at these airports are particularly problematic because they have ripple effects nationwide.

It is important to point out that although overall flight delays look favorable, history shows that traffic will rebound given the intrinsic value of air transport to the Nation's livelihood. FAA has an opportunity to position the Agency for when demand returns.

This leads me to my second point. Near-term initiatives that can reduce delays, particularly at choke points such as the New York airports, must be pursued by FAA. As we noted in our March 2009 testimony, FAA must continue to pursue a number of short-term projects that can enhance the flow of traffic at congested airports. These include new airport infrastructure, airspace redesign, and performance-based navigation initiatives. These initiatives are critical interim measures that can reduce delays until FAA can better define the expectations, costs, and benefits of NextGen.

Following record breaking delays in the summer of 2007, DOT's Aviation Rulemaking Committee, or ARC, recommended 77 initiatives to reduce delays at the three New York airports. While FAA reports that more than one-third of the initiatives are complete, most of them are not used or are used infrequently. Additionally, it is not clear that the completed initiatives have reduced delays since FAA has no way to measure their impact.

We believe it would be prudent for FAA to reevaluate the initiatives and determine what reasonably can be accomplished at the three New York airports. At this Subcommmitee's request, we will continue to review FAA's progress in implementing these initiatives.

Third, DOT has made progress on the customer service front. With fewer planes in the air and the resulting slowdown in passenger traffic, there was also a drop in consumer complaints in 2008. These were down approximately 20 percent from 2007, and there were 25 percent fewer reports of mishandled baggage. In addition, the amount of compensation doubled for passengers bumped from their flights.

More data are now collected on flights that are canceled, diverted, or returned to the gate to provide a better understanding of long, on-board delays. With airlines' advance schedules for summer 2009 showing scheduled flights down by about 5 percent from last summer, the expectation is that on-time performance and corresponding customer satisfaction will hold steady or improve further.

While these appear to be positive trends, these improvements were primarily driven by airline capacity cuts and service reductions and the corresponding decline in passenger traffic. It is therefore important for DOT to complete a critical rule that would provide enhanced protections to travelers. These include airline contingency plans for lengthy delays, designees to respond to complaints, and published delay and complaint data. Once finalized, DOT must work to position itself to oversee air carrier compliance with the new requirements included in the final rule.

In addition, DOT should continue the good faith efforts of the national taskforce that developed a model contingency plan for dealing with long, on-board delays. The taskforce issued its report to the Secretary last November and offered general voluntary guidance to airlines, airports, Government agencies, and other aviation service providers.

However, we think additional guidance is needed from DOT to include defining the time period that warrants efforts to meet essential needs of passengers caught in an on-board delay and determining how long to wait before deplaning them. We recognize that one size does not fit all but maintain that a range needs to be established.

In conclusion, the U.S. civil aviation industry is remarkably resilient. History tells us the demand for air travel will rebound. Given that the improvements we have witnessed with respect to delays and airline customer satisfaction are largely attributable to airline reductions in service, the Department, FAA, and stakeholders must focus on fundamental changes that can boost capacity and reduce delays in both the short and long term. We will continue to monitor

related efforts underway to enhance capacity and improve airline customer service.

This concludes my statement, Mr. Chairman. I would be happy to answer any questions you or other Members of the Subcommmitee might have.

Mr. BOSWELL. Thank you very much.

For questions, I will start with Ms. Fornarotto. What has been the response to DOT's notice of proposed rulemaking on enhancing airline passenger protections? Could you kind of comment on that?

Ms. FORNAROTTO. Sure. We have gotten a lot of comments from the proposed rulemaking. The comment period closed on March 9th and we are currently evaluating those comments. We are working as quickly as possible to get through them.

Mr. BOSWELL. In your written testimony, you state that the DOT had a Department-wide pandemic influenza plan. What does the plan consist of? How were its principles applied during the H1N1 outbreak or concerns?

Ms. FORNAROTTO. Over the last couple of years, we have been working with a variety of agencies to make sure that we did have a plan in place should something happen. We took those plans and we did apply them for H1N1.

In regard to H1N1 specifically, we put together a response team. We had meetings every day. We had principal meetings at the White House. Our Deputy Secretary was involved; our Chief of Staff was involved. We made sure that information was disseminated not only to the public but also to the airline employees and to airports, making sure that as much factual information got out as quickly as possible. As more factual information became available, we scaled up and then down our response given the threat.

Mr. BOSWELL. Thank you. Ms. LoBue, in your statement you state the FAA has established "congestion action teams to respond to airports where delays appear to increase significantly." Can you explain what that really means?

Ms. LOBUE. After the summer of 2007, we looked at those areas where we might need short term actions based on what we saw airlines staffing up to handle, what they were projecting in the airline guide, and the seats they were selling. Those congestion action teams are targeted at where we are going to see significant delays because of a buildup of air traffic.

Longer term, we see NextGen and many of the operational procedures and technologies that it promises giving us more long term relief.

Mr. BOSWELL. Thank you. You also say in your testimony that 30 of 77 ARC initiatives have been substantially completed. Could you give us a few examples of those 30? Has FAA seen an impact from the completed items?

Ms. LOBUE. Some of the projects of the 77 were terrific projects. One example is the Port Authority JFK example that I gave you in my oral statement. It is going to reduce ground delays by some efforts that have been put into the runway and the taxiways there to give more flexibility to air traffic and to the airlines in getting on and off to the gates. That is an example of a good project.

There were some projects in the 77 that were not within our scope, things like knocking down the Ramada hotel to increase ca-

pacity at the airport. So it was really a brainstormed list. Many of them were good projects. Some of them were projects that I think we will continue to look at as capacity issues over the years, but that are not practical to do immediately.

Mr. BOSWELL. Thank you. Mr. Scovel, would you agree with what she has just stated?

Mr. SCOVEL. Partially, Mr. Boswell. We would take issue with FAA's statement that indeed 30 of the ARC's 77 initiatives have been substantially completed. It seems like everyone has a slightly different count. We would count 14 as being completed and having measurable benefits as acknowledged by the stakeholders, the Port Authority, and the Agency. Of those, I am recalling six are in play now and in regular use. Another eight have been completed. They have been documented. They are kind of kept on the shelf for when traffic and weather conditions would require them. We do anticipate that they will produce benefits when they are in use.

With the remaining 16, however, the air traffic controllers have substantial problems with 5 and 11 have operational or technical difficulties. The applicability of those to congestion in the New York area isn't clear at all.

Mr. BOSWELL. Well, thank you. You state one fact that led to the decrease in the number of delays was airline flight scheduling practices. Could you expound on that a little bit?

Mr. SCOVEL. Yes sir, I would be glad to. Starting in the fall of 2008 with the reduction in the number of flights, the airlines also expanded by sometimes even just a few minutes the length of time that published schedules indicated a flight would be in the air. They also expanded by sometimes just a few minutes the length of time that an aircraft would be on the ground. Together, these changes had the effect of reducing delays because each airline flight was better able to match its published schedule. As a result of that, in part, the number of delayed flights was reduced from the fall of 2008. Those reductions continue today.

Mr. BOSWELL. Thank you. Mr. Duncan?

Mr. DUNCAN. Well, I apologize I didn't get here in time to hear the testimony. But you know, we had a hearing on some of this about a year ago. You probably covered some of this in your testimony that I didn't hear, but will you tell me what the Department and particularly what the airlines are doing, some of the things that have been done since we got into this a year ago?

Ms. FORNAROTTO. From the Department's perspective, we completed a taskforce for model contingency planning that wrapped up at the end of 2008. We are taking that model plan, and sharing it with the airlines and the airports. As the IG said, it is voluntary at this point but we backed that up with a notice of proposed rulemaking. Comments closed on March 9th and we are currently reviewing those comments so we can go towards a final rule at some point this year. Our Enforcement Office has been stepping up their efforts as well.

So you are seeing a full approach from the Department. I will also say, and the IG mentioned this as well, that we are changing how we report our statistics. You are now seeing us report long onboard tarmac delays so that consumers are also aware of what is

happening. We are trying to communicate better with passengers and get information out there as best we can.

Mr. DUNCAN. All right.

Ms. LOBUE. From the FAA's standpoint, we have done a number of things. You have seen nationally that we opened three new runways in November at Dulles, O'Hare, and Seattle. We opened a runway extension in Philadelphia. So we continue to work the infrastructure aggressively.

I think you have seen a lot of focus on the New York area as it drove a lot of the delays in 2007. We put caps on those airports and the amount of air traffic that could fly in there. We worked collaboratively with the airlines to try and spread the traffic over the day to minimize those peak hours.

This summer you have seen us particularly focus on using weather tools to try and minimize how much weather impacts the amount that those airports can handle on bad weather days. You have seen us do things like put in accelerated ground radar called the ASDE-X that will help with looking at some of the ramp delays and the staging, getting in and out of gates more quickly and to be better able to use those.

Mr. DUNCAN. I have to tell you that when I Chaired this Subcommmitee, we went out to Seattle to hold a hearing about a proposed new runway there. We were met with over 1,000 demonstrators against that runway. In fact, in the building where we were, they couldn't fit everybody in so the testimony was piped outdoors to where several hundred of the demonstrators were. When somebody would say something they liked, there was about a one or two second delay and then they would cheer. When they said something they didn't like, there would be about a two second delay and then we would hear all these boos coming from outside.

But I will never forget how controversial that runway was. So you have brought it back to mind, though, when you just breezed over it quickly and said you have opened a runway in Seattle. Boy, sometimes those things are very controversial.

Mr. Scovel?

Mr. SCOVEL. Mr. Duncan, the airport infrastructure improvements that Ms. LoBue did mention have been significant factors in reducing congestion and delays between Washington Dulles, Chicago, and the Sea-Tac runway that you mentioned. They have improved the number of operations nationally that can be conducted by hundreds of thousands each year. So they are very significant.

I would like to pick up on something that Assistant Secretary Fornarotto mentioned a few minutes ago. That was the Department's rulemaking efforts. I would like to give great credit to the Department for some finalized rules that it completed in the last year. It increased airlines' baggage liability limit and it doubled the amount of compensation for passengers who get involuntarily bumped. It has also strengthened the requirements by regulation for air passengers with disabilities. The proposed rulemaking that is now under consideration—and the Department is reviewing comments—takes further steps forward.

However, I would take issue with what the Department proposes on one point. I would urge the Subcommmitee and the Department to do more, in fact. The proposed rule would require airlines to

adopt contingency plans that would specify, among other things, the maximum tarmac delay that a flight could incur before the airline must meet passengers' essential needs. It would also require that passengers be deplaned if they are held for long periods of time on the tarmac. We think that provision in fact should go further.

It should define what constitutes the extended period of time when passengers' essential needs will be met. We would also suggest to the Committee and the Department that a range on delay durations is appropriate before passengers must be deplaned. Many of the major carriers who belong to ATA themselves have specified in their customer service plans an upper limit of 5 hours before deplaning. What the Department or this Subcommmitee might consider in that range sounds to us certainly appropriate.

Mr. DUNCAN. Thank you very much. Let me ask you this: One day I hear people say the economy is improving and the next day I hear it is not improving. Where are we in regard to passenger traffic and what do you expect over these next few months? Have you seen the numbers bumping up some? The planes that I fly on don't seem to be as crowded as they were a year or two ago. Do we know anything or have any guesses about that?

Ms. FORNAROTTO. We can get that information for you in terms of the actual numbers. We are more than happy to provide that to you.

Mr. DUNCAN. Okay.

Mr. SCOVEL. I have some information, sir. It is information that we have gleaned from the airlines themselves. As you know, the number of arrival flights was down last year from September through the end of this March by about 10 percent. The airlines are scheduling now for the summer. We anticipate from looking at their schedules that the number of flights will be down another 4 to 5 percent. So the airlines anticipate in their business plans that the number of passengers will be down.

Mr. DUNCAN. All right. Ms. LoBue?

Ms. LOBUE. That is consistent with our forecast. We come out with a national forecast each March and we also agree that we see it down 5 percent overall over the system. There are some pockets where it is down even more, places with discretionary travel like Las Vegas. We are seeing places like New York, O'Hare, and Atlanta where still demand is staying strong. So it varies but overall you are seeing the economy take an effect.

Mr. DUNCAN. Thank you very much, Mr. Chairman.

Mr. BOSWELL. Thank you, Mr. Duncan. Ms. Johnson?

Ms. JOHNSON. Thank you very much. I guess I will pose this to anyone who would like to respond to it. Several months ago we had hearings trying to ready the legislation that will be on the Floor tomorrow. We talked all about a passenger's bill of rights or what have you. I noticed that you are considering a chronically delayed flight as an unfair and deceptive practice. I would like to know under what circumstances you are considering that.

I had more concerns that FAA wasn't doing its job in terms of oversight than I had for late flights. Many times the weather has a great deal to do with the late flights. I can appreciate the attention given to that but we are in that weather now to some degree

in my area where I fly, and I would rather be on the ground waiting somewhere when the turbulence is going on.

How do you separate that from making sure that the planes are safe, that you can understand the mechanics, and that you have some type of code sharing? How do you do oversight for that?

Ms. FORNAROTTO. In terms of chronically delayed flights, the standard our Enforcement Office currently uses a delay of more then 15 minutes on more than 70 percent of the operations per quarter. Within the rulemaking, we do propose changes and we are currently evaluating them. I know the IG has recommended some changes; I know passenger rights groups have recommended some changes.

In terms of your safety question, without a doubt—FAA can chime in if they want to—but without a doubt we are very consistent that planes are not to take off unless conditions are safe and that all the safety checks before takeoff occur before aircraft take off.

Ms. JOHNSON. Do you do an analysis of the lateness? I don't know what is considered chronic. How do you determine what is chronic and what kind of analysis do you do?

Ms. FORNAROTTO. Currently our Enforcement Office uses the standard of more than 15 minutes on 70 percent of the flights within a quarter of a calendar year. So that is the standard our Enforcement Office uses to move forward on enforcement actions. There have been some proposed changes to that. We are working through that through the notice of proposed rulemaking.

Ms. JOHNSON. I was not impressed with Mr. Barattini [phonetic] or whatever his name was. I questioned him a number of times. He didn't have any idea what was going on at FAA. I hope that will change under this new Administration and that you will give more attention to your oversight.

There were many complaints, not having necessarily to do with passengers but with how that Agency is run, how it was a revolving door of people going to work for the airlines and getting by. I want to see a report that that has changed. Thank you.

Mr. BOSWELL. Thank you, Ms. Johnson. Mr. Boozman?

Mr. BOOZMAN. Thank you, Mr. Chairman. We often notice differences in the flight delay statistics that the IG Office presents, the numbers that FAA presents, and its contractors. Are you guys aware of those differences and can you help explain perhaps the discrepancy?

Mr. SCOVEL. If I could, Mr. Boozman, good afternoon. There are differences in flight delay statistics primarily between FAA and my office. FAA uses a subset of airlines and a subset of causes, and it uses as its measure the flight plans that airlines file for each flight. Our office uses a somewhat different set. We look at all carriers, all causes, and as our measure we compare actual performance to what the airline published to consumers in advance as what its flight intentions would be.

I can understand why FAA takes the route it does. Of course, it is looking for areas of operations where it has influence. So when it looks for causes of delay, it is looking for causes that can be linked to its own operation of the NAS. That is entirely appropriate. Our office has taken a different tack, however. We think

that U.S. decision makers and certainly the flying public as consumers are more interested in the overall picture in delays.

The two methods can result in significant differences. For the 7 or 8 months that ended in March 2009, FAA, for example, reported an on-time performance of 88 percent under their measure. By our measure, the on-time percentage was 78 percent. So there are significant differences.

Mr. BOOZMAN. Yes, ma'am?

Ms. LOBUE. If I could also clarify, the Inspector General is absolutely right that we do have a data source, we call it OPSNET, Operations Network, that our air traffic system folks use on a daily basis to see how the system worked yesterday. But we also do look at the same data sources that the IG looks at. We do look at the BTS data that is collected by the Department. We compare that to the operations planning data and try to keep that in sync.

I will assure you that the testimony today and FAA's portion of that is all consistent with the same data sources that both the Department and the IG looks at. So we have been paying attention over the last year as we have had these conversations on delay statistics to make sure that we do use consistent data sources. Thank you.

Mr. BOOZMAN. Very good. That is very helpful.

We have another issue that has come up, especially with the summer traffic and things. I am from Arkansas and the Arkansas delegation has asked in the past—there is a reorganization going on with the Memphis tower and that reorganization has been underway—what we ask is that it go ahead and be really defined fully once the new FAA administration is put into place. As a result of the delegation asking, that was delayed until I think in June. But I would just request that it go ahead and continue to be delayed since things have run a little bit late, that the final process be then.

I am the senior Republican Member in the delegation. My wife reminds me I am also the junior Member in the delegation since I am the only Republican. But it really is a very bipartisan thing. So again, that would be helpful if you guys could review that. We appreciate your help. We appreciate all you guys do and really look forward to working with you this Congress. Thank you very much.

Mr. BOSWELL. Thank you. Ms. Hirono?

Ms. HIRONO. Thank you, Mr. Chairman. Ms. Fornarotto, you are currently undergoing a proposed rule relating to chronically delayed flights as an unfair and deceptive practice. I am wondering what the penalty is for violating this rule should it go into effect.

Ms. FORNAROTTO. At this point, our Enforcement Office uses a standard as I said to Ms. Johnson. It is 15 minutes or more——

Ms. HIRONO. No, I wasn't asking about the standard. I wonder, what is the penalty? What happens if you violate an unfair and deceptive practice rule?

Ms. FORNAROTTO. So if you fall under the chronically delayed standard that we currently use, our Enforcement Office will send a notice to the carrier based on whatever flights, whether that carrier has one flight or 10 flights, for that quarter. They get a warning to see if they can get it fixed in that next quarter. If it is still

not fixed in the subsequent quarter, we then will take enforcement action. An airline can be fined $27,500 per violation.

Ms. HIRONO. Per violation? Have you ever imposed such fines on any airline?

Ms. FORNAROTTO. I don't have that information but we can get that for you.

Ms. HIRONO. Do you currently have other instances or certain conditions and situations that are already by rule deemed an unfair and deceptive practice?

Ms. FORNAROTTO. We do. We have a variety of issues that fall under unfair and deceptive practices. I can give you a recent example: When airlines started charging baggage fees, we said that it needed to be transparent. People needed to know what those fees were up front. We told airlines where they had to put that information so consumers were aware of those fees because we did consider that an unfair and deceptive practice should that information not be public and transparent and things of that nature. So that is just an example of something else that would fall under that. If you want more specifics, we can get that for you.

Ms. HIRONO. Actually, I would be very interested to know those kinds of conditions that are deemed unfair and deceptive with regard to passenger and customer service and those kinds of areas. I don't need it for every other thing. Then I would be interested to know what kind of enforcement actions have been taken. How many times have fines been imposed versus warning letters and all of that?

To the extent that a lot of the information that has to do with how you assess airline performance is vis-a-vis customer complaints, how easy is it for customers to complain when they encounter situations that are really irritating and/or otherwise not satisfactory?

Ms. FORNAROTTO. Basically, they can go to the web. We have an address at airconsumer.dot.gov. They can go right on the website and file a web-based complaint. It gets sent immediately to our Enforcement Office for them to take a look at. I was actually just on the website over the weekend and then today to make sure everything was up and running. It is very easy; it is very easily formatted for consumers.

There is also our DOT headquarter address, which I can provide to the Subcommmitee for the record, and a (202) telephone number where people can call in as well.

Ms. HIRONO. Wouldn't it be even easier if the airlines just passed out a piece of paper with this kind of information on it? Because of course I have experienced various kinds of delays and everything else but I have never filed a complaint. But if someone were to give me a sheet of paper there, I would probably fill it out. That might give you a more accurate picture of what is really going on. Would that even be contemplated?

Ms. FORNAROTTO. We can definitely take a look at that. Again, in the context of the NPRM we are taking all recommendations by passenger rights groups, by the IG, and by Members. You guys have spoken through the provisions in the FAA Reauthorization Bill. So we are taking all of that into consideration as we move forward towards a final rule.

Ms. HIRONO. I think we should make it as easy as possible for passengers to opine, especially when you use that as a basis for making some changes and contemplating rules changes.

Mr. Scovel mentioned that perhaps in this proposed rule you should be more specific as to the limits for the delays, et cetera, in terms of hours. Would you consider that a reasonable suggestion? Would you think about that?

Ms. FORNAROTTO. All of that would be in the context of the notice of proposed rulemaking so I can't speak specifically to it. But I can say that we take the IG recommendations very seriously. We are taking those into account as we move forward on the proposed rulemaking.

Ms. HIRONO. Thank you. Thank you, Mr. Chairman.

Mr. BOSWELL. You are welcome. Ms. Norton?

Ms. NORTON. Thank you, Mr. Chairman. This question is I suppose addressed actually to any of you. A Member from California this week asked me if I was on the Aviation Subcommmitee. She told me what I can only tell you is, in my view, a shocking revelation. She told me that another Member had a similar experience. This was a Member who was supposed to land in California. She landed in California, in Oakland, and she was told that they didn't have enough fuel to get to her last stop. I don't remember if it was L.A. or San Francisco. She said there were no inordinate weights, just the normal kind of weight. Could you explain how that could possibly happen?

Ms. LOBUE. I know once the high price of fuel hit, that airlines looked at what the weight of the planes were and how best to economize. That said, I think they are incentivized to be as safe as possible. So it is surprising that you would find a situation like that.

Those are the kinds of instances we would want to know about. If you have particulars, I think we would love to have more conversation with you. We take those items very seriously because they do go directly to air traffic safety. Thank you.

Ms. NORTON. Well, this is a very careful and responsible Member. I am going to suggest that she direct this to you, particularly since she said there was another Member who had a similar experience.

Incentivizing for safety is not good enough. The notion of running out of fuel under what were not abnormal conditions—even given what frankly is a lot of sympathy that I have for the airlines—really casts doubt upon your oversight. I will see to it that you get that information.

Could I ask you, are pilots on commuter aircraft trained in the same way as pilots on larger aircraft? Don't all speak at once.

Ms. LOBUE. I will talk to that. In the early 1990s, the FAA put in a number of rules and worked toward one level of safety for regional air carriers and main line air carriers. I think we have looked at the Colgan air tragedy as a great loss, but some of the information that came out at the NTSB hearing raised issues that we will be looking at.

Ms. NORTON. Are they trained in the same way or not today?

Ms. LOBUE. They have the same regulations and the same requirements.

Ms. NORTON. And the same qualifications?

Ms. LOBUE. And the same qualifications. That said, there are differences. You tend to get less experienced pilots at the regional airlines, with them moving up in degree to the main lines as they get more experience.

But that is an area we will be looking at very closely. Our designate for Administrator testified yesterday that that is an area he is very much focused on. He intends to look at it very closely.

Ms. NORTON. Well if they are going to move up, they obviously should not be moving out without having comparable if not exact qualifications. The more we learn, the more we are inclined to believe that was a preventable tragedy. We are used to tragedies that cannot be prevented in the airlines. I am extremely sympathetic with those. But this is very troubling.

Since 9/11, the Nation's capital, capital in many ways of the world, has been without both helicopter and general aviation service for all intents and purposes. Only a few years ago before the present majority came to power, only when the last majority was in power and there was wholesale agreement within the Committee did we get any return of general aviation service. That was only after the Chairman of the Full Committee in this very room threatened contempt on the officials—I believe they may have been FAA officials—who kept double talking the Committee.

Now what we have is essentially a signal to the world that seven or eight years, whatever it turns out to be, after 9/11 we are not capable of protecting our capital and thus have this kind of service. Before 9/11, there were 200 general aviation flights a month. That is what you might expect in the national capital region that not only contains the entire Federal presence but one of the highest producing parts of our economy. Maybe we ought to have less of that because of climate change, but that obviously is not what has happened here.

In response to the Committee, we got what can only be called an insult to the Committee. They said okay, you want general aviation in the Nation's capital, this is what we are going to do. They imposed the kinds of regulations on general aviation that in essence thumbed its nose at the Committee. Anyone coming in on a general aviation flight has to carry a Federal Marshall, of whom there are very few available. They have to stop someplace away from the capital at another port that they call a gateway. They have to have armed guards onboard, which calls for huge amounts of paperwork.

So the Nation's capital has gone from 200 flights per month to 200 per year. In essence, the Federal Government through regulation has deliberately shut down general aviation in the Nation's capital. Meanwhile, those parts of the Country where one might imagine general aviation flights might be most hazardous were up and running within days of 9/11. New York City was relieved of any restrictions within days. Despite its world famous skyscrapers, it has aviation virtually every single minute. How can you account for this treatment of the Nation's capital so many years after 9/11?

Ms. LOBUE. We work our regulations in accord with the Department of Homeland Security. I understand the impact on GA. I think the FAA over the years has been very much an advocate of general aviation and the benefits that it gives to the Federal economy. To the extent that we can help work with the Department of

Homeland Security and TSA towards this issue, we look forward to engaging with the Committee.

Ms. NORTON. Let me ask you to do this: That is too general an answer to be helpful. I understand that you may not have expected this question. My staff has been told that there exists a time line, which may mean an actual revision. Could I ask that within the next 14 days you get to the Chairman of this Subcommmitee a copy of the time line for returning general aviation to Ronald Reagan Airport?

Ms. LOBUE. I will look into that and try to expedite it. Yes, ma'am.

Ms. NORTON. Thank you very much. Thank you, Mr. Chairman.

Mr. BOSWELL. Thank you, Ms. Norton. You sure hit on some key points for me, too. I appreciate your questions.

Mr. Griffith?

Mr. GRIFFITH. Mr. Chairman, thank you. I have got some easy ones here.

I would like to make sure that our airlines are instructing our pilots in how to use their microphones back to the passenger area. Oftentimes I can't understand them so I don't know whether they are tired, don't care, or what. So that would help us, the consumers, a great deal.

Also, I don't know whether to imprison the people who are designing the seats on some of our aircraft. Or should we have a national contest to come up with comfortable seating? Since it is a quasi-monopoly and a privilege given to the airlines to serve our public, they really have no voice. I think a question was asked about how to voice a complaint. I think all of us that have been on the airlines have no idea who designed some of the seats given how long we have had to sit in them.

On deplaning, I think you need to be aware that there are probably 15 percent, or even as high as 20 percent, on some flights who are clinically claustrophobic. This is not a complaint that they are making idly. These are people who have panic disorders who are completely in control. They have probably geared up and sucked up and got on that airplane. To have someone that is insensitive to their wait I think is intolerable. I don't think we should tolerate it as a Country, nor should we allow an industry to serve us that is not sensitive to that.

I know the bottom line is important but I think this is also very, very important. You are going to get some reactions from some of your passengers that are going to make the headlines. It is going to be through no fault of their own. They just can't control themselves. I am a physician, by the way, by training so I am sensitive to that.

The other thing is how often do we culture the vents and the air for Methicillin-resistant Staph, resistant TB, and other infectious diseases and mold on our airlines? Is it done randomly or is it done consistently? Is it reported?

Ms. FORNAROTTO. I don't know the answer and neither does Nancy. But we will get that information back to you very shortly.

Mr. GRIFFITH. If we are not doing that, I think it would be a good idea. We are so mobile today and it wouldn't take very much for

something to occur that we could probably prevent with some very easy Microbiology 101. That would be a big help.

The other thing is our regional airlines and our regional pilots that are maybe young up-and-coming major pilots, do they go by the same sleep days flying that all pilots go by? Or are they more loosely regulated?

Ms. LOBUE. We do have one level of safety. The regulations on fatigue and flight and duty time do apply equally. That said, obviously in light of what happened with Colgan, we will be looking at those issues very closely.

Mr. GRIFFITH. Thank you very much. Mr. Chairman, thank you.

Mr. BOSWELL. Thank you, Mr. Griffith.

Here at this time I want to thank the panel very much. I appreciate your preparation and your time. I look forward to getting the information back that was asked for. Thank you very much. Have a good day.

I would like to invite the second panel to the table. I notice the friendly atmosphere at the table. That is good. We like that. Welcome to the table. And without a lot of ado, Mr. Meenan, we will start off with you. We appreciate your being here.

TESTIMONY OF JOHN M. MEENAN, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER, AIR TRANSPORTATION ASSOCIATION; JAMES M. CRITES, EXECUTIVE VICE PRESIDENT OF OPERATIONS, DALLAS/FORT WORTH INTERNATIONAL AIRPORT, AND MEMBER, AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES AND AIRPORTS COUNCIL INTERNATIONAL-NORTH AMERICA; PATRICIA A. FRIEND, INTERNATIONAL PRESIDENT, ASSOCIATION OF FLIGHT ATTENDANTS-CWA, AFL-CIO; AND KATE HANNI, EXECUTIVE DIRECTOR, FLYERSRIGHTS.ORG, COALITION FOR AIRLINE PASSENGERS BILL OF RIGHTS

Mr. MEENAN. Mr. Boswell, thank you very much. We appreciate the opportunity to appear today.

As both my written testimony and the testimony from the first panel make clear, the airline industry is making measurable, steady progress in dealing with customer service concerns. All of the trends that we look at are headed in the right direction. That translates into improving customer service.

The progress has come for a variety of reasons, not least of which has been the intensive carrier focus on on time performance and the development of programs to constantly monitor delays and alert top management to extended periods of extended delay. These programs, along with the companion effort to develop contingency plans that Mr. Crites will be discussing in more detail, have gone a long way toward meeting the needs of our customers.

We know, of course, that there continue to be rare situations in which prolonged delays do occur. We appreciate and indeed share the frustrations of passengers on those rare delayed flights that we all read about in the newspapers or see on TV. There are some who would call for legislation or regulation to prohibit these thankfully rare events. We think that would be a mistake. As I mentioned, we are making measurable progress. With some 20,000 flights a day, more than six million a year, we clearly cannot afford to manage

by anecdote. Nor do we think it wise to legislate or regulate by looking only at anomalies.

The people who are closest to the situation tell us that hard deadlines to return a flight to a terminal or otherwise deplane passengers are going to result in more rather than fewer inconvenienced passengers. We believe them and we think you should as well. My written testimony describes in more detail why that is the case. We know too that the key drivers of delays, misconnected baggage, missed and canceled flights, and all the other ills of the system are bad weather and system congestion.

We recognize too that a slumping economy and reduced transportation demand have temporarily removed some of the stresses from the system. In effect, what we have now is a brief window of opportunity to expedite the deployment of our long overdue modernized air traffic management system. We think it is possible to get NowGen, as we call it, substantially in place in the next three to four years.

Again as my written statement discusses, by making about five new technologies and the procedures to allow them to really deliver system capacity a key national priority, we know that system performance along with beneficial results for customers and the environment can be dramatically and permanently improved. Even after the economy and transportation demand come back. If we do not act now, though, we know we will all be deeply frustrated.

You also asked to hear a bit about the industry's response to the recent H1N1 flu outbreak. While airlines and the FAA are not in the public health business, we work very hard to protect the health of our employees and our customers. With the very first reports of the outbreak, we were communicating constantly with the CDC as well as other Government agencies. We worked with the airports and our international partners to ensure a coordinated response following CDC's established protocols for infection control.

The airlines stocked hand sanitizers, increased the supply of masks for use with sick passengers, and took other common sense health precautions consistent with CDC guidelines. Equally important, we began communicating with our passengers and our employees all the information we were receiving from the CDC and the WHO.

Finally, I wanted to take just a moment to comment on an absolutely ludicrous suggestion by some in the airport community that the limited experience that some airlines have had in generating ancillary revenues recently have left them somehow awash with cash and justify a massive 26 percent tax increase in the form of an increased PFC charge, a passenger facility charge. The fact that carriers have had some limited success with modest new revenue generation does not change the fact that the airlines have lost $36 billion from 2001 through 2008. Data just coming out the other day indicated that 2008 losses alone amounted to some $9.5 billion.

It is worth remembering that at the core, aviation is all about the profitable sale of air transportation. At some point, the airlines that drive this economic engine that sustains Government services, airports, and a wide share of the Nation's economy have got to make the kind of sustained earnings necessary to support their cost of capital. If that does not occur, the future is going to look very

dark not just for the airlines but for our economy in general. An increased PFC is not the place to start improving the situation.

Thank you. I will look forward to responding to your questions.

Mr. BOSWELL. Thank you. Mr. Crites?

Mr. CRITES. Mr. Boswell, good afternoon and thank you for inviting me to participate in this hearing.

I am here today to provide insight into airport contingency planning. I would like to begin by saying that safe flight is accomplished through a close, industry-wide partnership with communication, collaboration, and coordination across all service providers. Contingency planning is no different. Whether an emergency is caused by weather or a contagious disease, there is a need to have all service providers open for business and openly partnering to address passengers' needs.

In reality, it has been largely left to the airlines and FAA to accomplish this task. However, there are critical services that can only be provided by the other aviation stakeholders such as airports, TSA, CBP, concessionaires, and ground transportation providers.

The good news is that the aviation industry developed a model contingency plan to address this issue through the DOT Tarmac Delay Taskforce, which we have implemented at DFW. First off and most importantly, the plan calls for airport service providers to simply stay open for business. The same holds true for TSA and CBP as the situation warrants. Second, the plan calls for all stakeholders to share and integrate their contingency plans to ensure that all parties are aware of what is occurring and to enable mutual support in addressing passengers' needs. Finally, it calls for partnering between the airlines and airports for the ground handling and deplaning of passengers to avoid the types of unacceptable situations that have been experienced by passengers stranded on aircraft.

Diverted flights are called out for special attention. The plan recommends that the FAA and airlines avoid diverting international arriving flights to airports lacking CBP resources. Once again, all stakeholders are expected to be open for business to properly receive and process flights. This includes the ability to degate or properly ground handle the aircraft and to provide concessions support and TSA and CBP passenger screening as may be required.

DOT earlier this year issued an NPRM for enhancing passenger protections by requiring airline contingency plans. I would offer that airline plans should include a requirement to coordinate their plans with all airports at which they provide scheduled or charter service.

I would now like to talk to the value of this partnership as it relates to the emergency response to contagious disease outbreaks or pandemics. First, extensive partnering has been developed and effectively deployed at the local airport level to address diseases such as SARS, bird flu influenza, Ebola, and the like. Additional partners are brought to the table, including CDC and local public health officials, to provide effective real time and tailored response guidance. This expanded team currently addresses a wide variety of medical concerns including yearly flu season disease outbreaks.

This system was placed in action on April 28 at BWI Airport when an AirTran flight arriving from Cancun had two individuals onboard exhibiting flu-like symptoms. AirTran contacted BWI officials who activated their emergency plan. This included contacting the CDC quarantine station in Washington, D.C. While the two individuals were found not to have the H1N1 flu, it did show that the system worked.

Can we do better? Absolutely. While public health issues vary greatly, a process for aligning stakeholders at a level similar to that developed in the model contingency plan I just spoke to does not yet exist. However, I do know that DOT is working with ACI-North America, ATA, and IATA as well as CDC and DHS on developing just such a plan. In summary, the challenge is to ensure everyone is open for business and continuously communicating, collaborating, and coordinating their efforts to address any and all passenger needs.

In closing, I want to thank you for your support of the funding necessary for airports to be able to finance necessary safety and capacity infrastructure. Your support of the increase in the PFC user fee as well as the increase in AIP funding is greatly appreciated. Also, as Chairman of the Aviation Group for the Transportation Research Board, I want to express my sincere appreciation to this Subcommmitee which helped to create and fund this highly effective airport cooperative research program.

Thank you.

Mr. BOSWELL. Thank you. Ms. Friend?

Ms. FRIEND. Thank you, Mr. Boswell. As the world's largest flight attendant union, we do appreciate having the opportunity to testify at today's hearing. As the front line employees responsible for the safety and security of the aircraft cabin, we provide a unique perspective on these issues.

I would first like to focus on the topic of emergency contingency planning. The recent health emergency surrounding the spread of the H1N1 virus once again brought air travel and the spread of infectious disease to the forefront of Government and public attention.

By nature of our work, flight attendants come in contact with hundreds and possibly thousands of passengers every day. We are keenly aware of our role in the possible transmission and prevention of a disease during a public health emergency. Our interest is not only to protect our members from exposure, but also to minimize the possibility of our members inadvertently spreading the disease.

In this most recent public health emergency and in previous outbreaks such as SARS in 2003, we called on the FAA to issue directions to airlines that would minimize the risk of exposure to flight attendants and to do our part to prevent the spread of an infectious disease. This year, AFA-CWA sent a letter to the FAA in the very early days of the H1N1 virus outbreak. We requested that the FAA issue an emergency order to all U.S. carriers requiring them to take immediate and specific steps.

Among those steps were requirements that the airlines provide flight attendants with non-latex gloves and masks; that the airlines allow flight attendants with flu-like symptoms themselves to call in

sick without risk of discipline; that they require airlines to develop, implement, and enforce passenger screening standards as recommended by the WHO, the CDC, or the relevant national health official; and that they require all U.S. airlines flying to and from Mexico to have operative, potable water systems, soap, and sanitary towels in place for hand washing during flight operations.

The FAA's response was totally unsatisfactory and unfortunately most carriers did not implement these basic and effective steps during the outbreak of H1N1. Instead, the airline management in this Country seems more concerned about the appearance and views of flight attendants as marketing tools rather than our proper role as safety and security professionals. The health of flight attendants and the traveling public should not be subject to the marketing concerns of airline management.

In order to minimize the threat posed by a public health emergency, several permanent and mandated steps must be taken to mitigate that threat:

First, we believe it is necessary to provide and apply OSHA-like or basic OSHA workplace safety and health protections to the aircraft cabin workplace. OSHA protections would provide an excellent benchmark for reacting in a proactive manner during public health emergencies.

Another permanent step that can be taken immediately relates to the aircraft's onboard water supply. It is not uncommon for crew and passengers to find an inoperable lavatory on a flight, which limits timely access for flight attendants and passengers to properly wash their hands. We advocate that at a minimum each class of service in the aircraft must have at least one operational lavatory for an aircraft to be allowed to operate.

We also believe that aircraft for both international and domestic flights must contain adequate supplies of alcohol-based gel per recommendations of the CDC. This will help to reduce the spread of disease and infections when onboard facilities are inadequate.

I will turn now to the outlook for summer travel. As I sit here today, Mr. Chairman, I have decades of experience working in this industry. As much as I would love to say that there is a magic wand that we can wave and make the summer travel season flawless, unfortunately we all know that is impossible. The load factors will increase, particularly as capacity is reduced. Mother Nature will cook up the inevitable summer storms. The aircraft will stack up on runways and circle above.

Each summer and during other weather events throughout the year, we hear the horror stories. We get it. We get it because we are there, too.

The voluntary measures by airlines and the attempts to enact so-called passenger bill of rights legislation are simply band-aid approaches to a much larger systemic problem that plagues our Nation's aviation system. The solution often referred to as NextGen needs to be rebranded as NowGen as the work to update our air traffic control system must be done as quickly and safely as possible. Any passenger bill of rights, no matter how well intended, will not solve the complex air traffic control problems until we upgrade the outdated equipment that currently cannot properly handle aircraft traffic or plan for predictable summer storms.

In the current environment, our sympathy for a passenger bill of rights is tempered by what we know will occur if such legislation is enacted. The Nation's flight attendants will become trapped between Federal mandates and management's inability or unwillingness to follow the law. The Nation's flight attendants will be put in a no-win situation when the mandates are not followed. Management is not the cabin having to explain the violations, but we are. The airport authorities are not onboard to explain why gate space or facilities are not available and why extended taxiway waits are occurring.

We believe that the best solution for flight attendants, passengers, and the aviation industry is for the House and Senate to follow the lead of this Committee and pass the FAA Reauthorization legislation now so that work can begin to fix the real problems this beleaguered industry faces.

Again, I thank the Committee for giving us this opportunity. I would enjoy answering any questions that you may have.

Mr. BOSWELL. We thank you. Ms. Hanni?

Ms. HANNI. Thank you, Mr. Boswell, Ranking Member Petri, and Members of the Committee. On behalf of FlyersRights.org, I thank you for inviting me again to appear at this hearing on consumer rights.

We appreciate the airline passenger rights provisions you have included in House of Representatives 915: The FAA Reauthorization Act and we recognize the improvements that you made compared to last year's bill. But let us not break our arms patting ourselves on the back for requiring that airlines provide basic human necessities like food, water, temperature controls, and working bathrooms, not when passengers are being stranded still on the tarmac for seven, eight, or even nine hours.

Within just the past few weeks, Air Canada and three other Canadian airlines have voluntarily instituted a 90 minute limit on tarmac delays. That is because a very tough, no nonsense Canadian airline passenger bill of rights is currently making its way through Parliament that would limit tarmac strandings to one hour. The bill is C-310. The author of the bill, Jim Maloway, is Member of Parliament and is actually here with us today to witness my testimony. The other is Bruce Cran, who is the President of the Consumer Association of Canada. They are working very hard to get their bill passed.

Here at home, though, the FAA Reauthorization Bill leaves it up to the airlines themselves to decide when we will be able to get off the plane and back to the terminal. There are no uniform limits at all.

Last month in Philadelphia, a blind 62 year old former interpreter for the European Union was dragged off a plane in handcuffs just for asking why the aircraft was still sitting on the tarmac and how long it would be there. Paying passengers deserve to know they won't be sitting on the tarmac for nine hours.

We do want to acknowledge the provision you added requiring that airports receiving international flights have contingency plans for dealing with stranded aircraft. It is about time. Too often passengers returning from international flights have been stranded on

arrival for hours at a time. But absent a plan regarding the airlines to allow the passengers off, the airport plans will be moot.

Just last month, our hotline received a call from a passenger onboard Delta Flight 510 coming in from the Turks and Caicos, bound for Atlanta but diverted to Columbia, South Carolina because of a thunderstorm. He and his family sat on the Columbia tarmac for almost six hours with no food, no water, and rest rooms that had stopped working. His two year old had not eaten in 10 hours. After getting off the plane, the 130 or so passengers were herded into a concrete subterranean room with 20 chairs for almost 140 people. There they stayed for another hour, all because the airport and the airline lacked adequate plans for dealing with an incoming international flight.

Here is what FlyersRights.org believes ought to be included in the FAA Reauthorization Act this year: We want a single, enforceable, industry-wide limit on the amount of time passengers can be held onboard an aircraft on the tarmac. We call it a right of deplanement. Passengers call it basic common sense. We also want a requirement that airlines produce contingency plans for international flights landing at domestic airports. Airport contingency plans alone are not enough, as we saw with Flight 510.

I ask you to think of the people who have contacted FlyersRights.org in the last month. A 72 year old woman, a diabetic, was stuck on the Austin tarmac on a diversion for four hours without food or water. Her daughters, frightened to death, were trying to find out where she was. She also has early stage Alzheimer's. A blind man was hauled off to a Philadelphia jail just because he asked how long the airline was going to keep him on the tarmac.

Just try to imagine eight or nine hours in a sealed tube with the screaming children, the people in coach in the middle seats, and the business people who miss appointments and productive time. For them, these are not the friendly skies. It is time they treated the American flying public like paying customers, not like cattle.

I would like to address the frequency with which this happens. It is a daily occurrence that planes sit for three hours or more. Data provided from 2008 showed 1,320 flights that sat for three hours or more on the tarmac. That is 132,000 people who sat for more than three hours on the tarmac last year.

James May testified a few days ago that the economic loss to passengers due to flight delays is $41 billion a year. That seems to me like a double whammy to the flying public who is already smarting from the economy.

Thank you very much for letting me testify. I will look forward to your questions.

Mr. BOSWELL. Thank you for being our conscience. Let me just make a quick comment. I think everybody is trying hard.

Ms. HANNI. Pardon?

Mr. BOSWELL. I think everybody is trying hard. I appreciate what you have brought to us. We all have a great respect for the men and women of the cockpit. We should. Our lives are in their hands. But I will tell you, I have just as great an appreciation for those flight attendants that put up with us, the public. They are a great

bunch. They try hard. There are things we can do better and I think we are working at it.

Mr. Duncan, I know you have some things to do. I would like to offer you some time.

Mr. DUNCAN. Mr. Chairman, I have a group of people waiting for me out there in the waiting room so I won't ask any questions. But I would like to say that several years ago I heard on the NPR news that the Russian Aeroflot system sometimes had delays as long as four days. A plane wouldn't fly and then they would say come back tomorrow. We are so fortunate to have the aviation system that we have in this Country. It is the best in the world.

Now, everybody should always be trying to do better and to do more. If you lose the desire to improve, it is sad for you and for the people you work for. But there is a human nature tendency that if people have 99 good flights and one bad one, the one they will tell everybody about is the bad one.

I fly and for many years now I have flown at least a couple of times a week, sometimes more. I am amazed. In fact, I think it is miraculous how many of these flights arrive on time. I am amazed that we have so many millions and millions of not only passengers that arrive on time and safely, but that we have all these hundreds of millions of bags with just a tiny percentage that are lost.

I think it is good that people are here pointing out some problems and ways that things can improve. But I also think we need to realize that we have by far the best aviation system in the world. We need to be a little more grateful and appreciative of what we have instead of just always blasting away at everything. Thank you.

Mr. BOSWELL. Well, I thank you for those remarks. At the same time, Mr. Duncan, I think that if you and I had to put up with a three or four year old for eight or nine hours on a tarmac we would probably be asking for help. Anyway, I appreciate that, too.

Mr. Meenan, ATA participated in that national taskforce which established guidelines for airlines and airports by developing model contingency plans. Do all airlines have contingency plans in place? Were they updated to reflect the recommendations of the taskforce?

Mr. MEENAN. All of our members do have contingency plans in place and they are, in fact, updated all the time.

After the recent Delta incident, they went back and updated that plan once again. There were plans in place for dealing with the arriving international flight at that particular airport. Unfortunately, the airport had been reconfigured during the period between when the plan was made and when the diversion occurred.

These are now being updated on an annual basis to make absolutely positive that we can deal with these situations as they arise.

Mr. BOSWELL. Thank you. You state that the airlines have been "able to draw on well established practices to provide medical attention to ill passengers and crew, and to report communicable diseases to public health officials." Would you elaborate on that?

Mr. MEENAN. In the immediate aftermath of the reporting of the H1N1 flu, we went into constant communication with the CDC and with a whole cadre of Government agencies that were involved with that. We also were communicating as I said with the airport community, with the international aviation community, and with

our employees to get the best possible information out there as quickly as possible. We worked at not being unduly alarming but at the same time dealing responsibly with these issues. We think it was quite successful.

In the after action assessment of things, there were obviously some plans that were put in place following SARS that expected a longer period of preparation to be available to the United States to deal with these threats. It is clear that that piece of the plan needs to be rethought. That is going on right now as well.

Mr. BOSWELL. Thank you very much. Mr. Crites, the DFW many years ago—I will date myself, I was instructing at the helicopter school over at Mineral Wells—I watched that plan starting to develop. It is quite an operation. You do have a lot to deal with and I appreciate it very much.

But in your testimony you discussed the contingency planning guidelines document that came out of DOT's taskforce. To what extent has industry implemented these guidelines? Maybe some of the rest would like to comment as well.

Mr. CRITES. Thus far, sir, DFW hosted a number of workshops. We invited all of our airports that serve as diversion airports to DFW Airport to participate in that. What came from that is that all of those airports have developed response plans as it relates to an integrated fashion.

Atlanta has also held a workshop. I know that L.A. and Pittsburgh are also going to be hosting these things to develop and implement these plans. But I do not believe that it has been fully implemented throughout the system yet.

Mr. BOSWELL. Ms. Friend, did the airlines provide appropriate guidance to flight attendants on H1N1?

Ms. FRIEND. They passed on the link to the CDC website. That is essentially what they did. Some were better than others.

We actually conducted a survey of the 20 airlines we represent asking them three specific questions. Were they permitted to use non-latex gloves for the collection of essentially trash and used items? Did management have a relaxed disciplinary policy for flight attendants who thought they might be suffering some flu-like symptoms? And were they willing to accommodate schedule adjustments for pregnant and/or immune compromised flight attendants?

The overwhelming response to numbers two and three was absolutely not. There was some limited response to number one, the reason being that airline management seems to think that flight attendants protecting themselves by the use of non-latex gloves would frighten the passengers. So most of them did not give permission for that even when flying into the high risk areas in Mexico.

That is why we have repeatedly asked the FAA to mandate these sorts of provisions. We can't count on our employers to voluntarily do it.

Mr. BOSWELL. Thank you. Ms. Hanni, you mentioned serving on the DOT's taskforce on lengthy tarmac delays. What was your role on this taskforce? Would you elaborate on that please?

Ms. HANNI. Yes. I was a member of the taskforce, appointed. My role was to represent the consumer side. I was the only nonprofit consumer advocate on the taskforce, and I believe there were 36

members. It was a learning experience for me. I had not been on a taskforce before so I didn't really know what to expect in the end result.

One thing I would like to say is that Jim Crites was a leader who came in with brilliant ideas, frameworks, and structures and a true understanding of how to actually solve some of the problems that we are discussing. He has implemented at Dallas/Fort Worth exactly what he thought could be done and believes is possible.

There are a lot of airports that have not adopted it. That is why we saw what we saw at Columbia, South Carolina and especially with some of the celebrated international flights like the K'taka Airlines flight and AeroMexico. Many of those, they simply didn't have a way to get the passengers off and put them in a sterile room.

On the taskforce, the one olive branch that was offered was by TSA. They actually did a presentation for us where they said they would allow the airports and encourage the airports to have three things available: one, a sterile room where they can deplane international passengers on a diverted flight, two, that those people will be able to be accompanied out of the room and back to go to the rest rooms and get food for themselves, and three, that they will be able to be replaned without having to go through security again. They very strongly recommended that all of the airports adopt that, especially if they are airports that get diverted flights, that receive and are on the list to receive them.

So we are a little discouraged that more airports haven't done what Jim has done. He has been very proactive and is a leader in the area of the airports actually having plans that work.

Mr. BOSWELL. Mr. Meenan, do you have any comment to make on what she just said?

Mr. MEENAN. As I said, our airline members all have contingency plans in place which they update on a regular basis. They work with the airports that they serve to make sure that those contingency plans are effective at those airports. As to whether or not each of the airports has an independent contingency plan, I really am not in a position to comment at this point.

Mr. BOSWELL. Okay, just for conversation, some of us, I know some people even here in this Congress, don't have a heart problem but we might have a physical need. There is no way they are going to sit out there for more than two or three hours at the most before they have got to have some kind of facilities. If the bathrooms are plugged up and so on, what do you tell that person? Do you have to declare an emergency to get a step? Is there any way they can get off the airplane and get back into the terminal?

Mr. MEENAN. Under the contingency plans that we have in place today, if a flight is delayed for a prolonged period on the order of two or three hours, most of the carriers do offer the opportunity to deplane if that is at all possible. They also make accommodations onboard to provide necessities for the passengers right now.

There have been a lot of stories about all these nonfunctioning lavatories that basically have not proven to be the case when we have examined them in more detail.

The fact is that what we are concerned about is not the contingency plans. We believe those are out there. Carriers are making

hard calls on their own to determine when a plane should come back in from the runway if necessary. The problem is if we impose an absolute deadline of, say, three hours. Carriers are then going to manage so as not to violate that deadline. So you are going to start seeing airplanes coming in at two hours and 15 minutes or two hours and 45 minutes so that they don't break the three hour rule.

What will happen then is we will have substantially more cancellations; we will have substantially more passengers we are unable to accommodate on the next scheduled flight; we will have people waiting in airports or in the city where the airport is located potentially for days when they could have gotten out. The airline is in the best position to know if that flight has a fairly good potential to take off before three hours and 25 minutes.

What we are trying to avoid is a legislated or regulated hard deadline. It is going to make the system less user friendly rather than more user friendly.

Mr. BOSWELL. Well, I can say from a frequent flyer situation, it really helps for the crew to keep you informed factually, not otherwise.

Mr. MEENAN. We are in absolute agreement.

Mr. BOSWELL. Well, I think we will bring this discussion to a close. I want to thank all of you for your participation and your work. I think we will just keep working at this.

I enjoyed seeing the Washington Post article, Airlines Post Rare Improvement in Customer Survey. That is a good sign. At a University of Michigan study, airlines have shown improved levels of care towards the passengers they have retained with satisfaction in service levels rising 3.2 percent. I bet Ms. Hanni would like to see it raised a little higher.

[Laughter.]

Ms. HANNI. We all would.

Mr. BOSWELL. We all would. Thank you very much. This meeting is adjourned.

[Whereupon, at 4:13 p.m., the Subcommmitee was adjourned.]

OPENING STATEMENT OF
THE HONORABLE RUSS CARNAHAN (MO-03)
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
SUBCOMMITTEE ON AVIATION

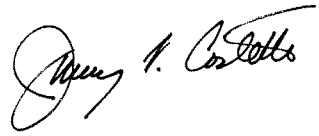
Hearing on
Aviation Consumer Issues: Emergency Contingency Planning and Outlook for Summer Travel
Wednesday, May 20, 2009
2167 Rayburn House Office Building

I want to thank Chairman Costello and Ranking Member Petri for holding today's hearing on aviation consumer issues.

The airline industry has continued to see travel numbers decrease since 2007. Resulting from the recession, high fuel prices, and the recent H1N1 virus outbreak, air travel is expected to maintain its steady decline. Lower numbers of domestic flights, however, have also led to decreases in the number of delayed and cancelled flights. While this noticeable improvement for consumers has made flying a more positive endeavor, as the swine flu outbreak has shown, it is important that we are sufficiently prepared to deal with issues that could continue to weaken the airline industry.

Organizations such as the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Onboard Ground Delays are necessities for improving the flight experience for passengers. While these developments are making the consumer experience with the airline industry increasingly positive, more work still needs to be done. We must ensure that we are fully prepared to appropriately respond to events that could negatively affect air travel while simultaneously improving the overall passenger flight experience.

In closing, I want to thank our witnesses for joining us today. I look forward to hearing your testimony.



STATEMENT OF
THE HONORABLE JERRY F. COSTELLO
HEARING ON AVIATION CONSUMER ISSUES: EMERGENCY CONTINGENCY PLANNING AND OUTLOOK FOR SUMMER TRAVEL
MAY 20, 2009

- I want to welcome everyone to our Subcommittee hearing on "Aviation Consumer Issues: Emergency Contingency Planning and Outlook for Summer Travel."

- This Subcommittee continues to examine consumer issues and airline delays to provide accountability and oversight of the Department of Transportation (DOT), the Federal Aviation Administration (FAA), and the airline industry. In the 110th Congress, the Subcommittee held a series of four hearings and one roundtable meeting on flight delays and consumer issues.

- Today, we will examine the progress and remaining challenges to reduce flight delays, and improve airline consumer protections.

- Although delay and customer service statistics show improvement overall, we are interested in hearing from the witnesses to learn if these trends can be maintained when air travel rebounds.

- The downturn of the economy had a significant impact on the airlines. Roughly 13 percent of domestic scheduled flights were cut, airfares increased, and new fees for services, such as checked baggage, were initiated. This led to a 10 percent decline in passengers, compared to the same period in 2007. With fewer flights and less passengers, airline delays decreased. According to the Bureau of Transportation

Statistics, approximately 20 percent of flights were delayed or cancelled thus far through March 2009, the lowest level since 2003.

- Despite this decline in delays nationwide, New York remains a critical chokepoint in the system. I have requested that the DOT Inspector General (IG) examine how the delays in the New York regional airspace affect the rest of the National Airspace System and I look forward to the IG's preliminary assessments.

- According to the FAA, 75 percent of delays nationwide in the summer of 2007 resulted from congestion surrounding New York. The DOT IG will report today on progress made by FAA to implement the 77 operational and infrastructure

improvements that the New York Aviation Rulemaking Committee recommended.

- Today's hearing will also touch on how the aviation industry plans and reacts to health emergencies, and what precautionary steps are taken to protect passengers and those who work onboard the aircraft. This is especially important with the recent outbreak of the swine flu.

- The airline industry plays an important role in assisting public health officials to control the spread of communicable diseases. The outbreaks of Severe Acute Respiratory Syndrome (SARS) and avian flu have shaped how government agencies and airlines prepare and plan for public health emergencies to protect public health and diminish major travel disruptions.

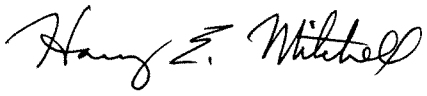
- Air travel continues to be safe, despite the recent swine flu outbreak. Airports and airlines are voluntarily increasing their efforts to clean public spaces thoroughly and are informing the public on the latest travel and health advisory notices. Flight attendants also play a critical role in screening passengers for "flu-like" symptoms and taking precautions to ensure passengers are protected from exposure to the virus.

- The hearings we held in the 110th Congress greatly shaped the consumer protection provisions incorporated into H.R. 915, the "FAA Reauthorization Act of 2009."

- Tomorrow the House of Representatives will consider this legislation and I look forward to working with the Senate to pass a final bill that includes strong consumer protection.

- With that, I want to again welcome the witnesses today and I look forward to their testimony.

- Before I recognize Mr. Petri for his opening statement, I ask unanimous consent to allow 2 weeks for all Members to revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses. Without objection, so ordered.



Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Aviation
5/20/09

--Thank you Mr. Chairman.

--This has been a difficult year and a half for the airline industry. First it was sky high fuel costs. Then it was the recession.

--Demand has slowed, and the airlines have cut flights.

--To the extent there is a silver lining in this otherwise dark cloud, it is that the reduced air traffic has reduced delays. According to the Department of Transportation's Inspector General, they're down 24 percent.

--Unfortunately, delays at the nation's worst bottleneck airports have only diminished slightly. For example, delays at Newark Liberty International are only down .4 percent.

--These bottlenecks impact all of us across the country. It has been estimated that just 7 airports account for as much as 72 percent of all air travel delays.

--Phoenix Sky Harbor Airport is already the 8th busiest in the nation, and at the rate our area is growing, we are facing a serious risk of becoming the next national bottleneck.

--The FAA has already warned Phoenix that it is one of 8 metropolitan areas that will need significantly more capacity by 2025.

--If we are serious about preventing a return of the kind of delays we saw in 2007, we need to ensure that we have enough capacity to meet our future demand.

--Fortunately, we are taking steps to do just that. We're building an automated train to link Sky Harbor with the new Valley light rail system. When complete, this will provide more efficient access to Sky Harbor.

--Moreover, we're developing Phoenix-Mesa Gateway Airport as a compliment to Sky Harbor.

--And make no mistake, our efforts to reduce congestion aren't just about improving convenience, they are about growing our economy.

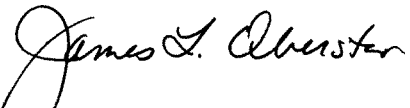
--Our airports are already powerful economic engines, with tremendous potential for growth.

--Sky Harbor generates an estimated $20 billion in economic impact.

--Gateway's economic impact is already nearly $500 million and the airport is already sustaining 4500 jobs.

--I look forward to hearing form today's witnesses.

--At this time I yield back.



OPENING STATEMENT OF
HONORABLE JAMES L. OBERSTAR
BEFORE THE HOUSE AVIATION SUBCOMMITTEE
AVIATION CONSUMER ISSUES: EMERGENCY CONTINGENCY PLANNING AND OUTLOOK FOR SUMMER TRAVEL
MAY 20, 2009

I want to thank Chairman Costello and Ranking Member Petri for calling today's hearing on "Aviation Consumer Issues: Emergency Contingency Planning and Outlook for Summer Travel."

Mr. Chairman, thank you for your ongoing commitment to passenger protection and oversight. Last Congress, this Subcommittee held four hearings and one roundtable meeting on these issues. As a result, the Department of Transportation (DOT), Federal Aviation Administration (FAA), airlines and airports have taken some actions to improve customer service and reduce delays, and I hope to hear today that they will be doing even more.

Another recent issue of importance to passengers and the aviation industry has been the outbreak of the novel influenza A (H1N1), also known as the "swine flu." It has affected thousands around the world. I am pleased to hear that, in most instances, DOT, FAA, airlines and airports responded quickly to the guidance that was provided by the Centers for Disease Control and Prevention to protect workers and passengers.

The DOT and airlines worked to reassure the public that it was, and still is, safe to fly. It seems that the lessons learned from past disease outbreaks, like Severe Acute Respiratory Syndrome (SARS), were well-applied in this recent outbreak. I look forward to hearing from the witnesses on how contingency plans are used in these situations.

I also look forward to receiving testimony from the Department of Transportation Inspector General (DOT IG), who has been tracking the issues of consumer protection and airline delays very closely, and whose recommendations have driven many of the actions by DOT, FAA, airlines and airports.

According to the DOT IG, delays declined by 24 percent between the second half of 2007 and the second half of 2008. Delays have decreased as a result of declines in traffic and corresponding cuts in capacity. I want to ensure that we continue to work on efforts to mitigate delays, since traffic will eventually increase. The "chokepoints" of the New York area, Atlanta, and Chicago remain problematic and experience higher rates of delays than the rest of the country.

In 2008, there were over 1,200 flights with taxi-out times of three hours or more. While that is a small percentage of total flights, it places a huge inconvenience and stress on the passengers and crew who are on those flights. The DOT, FAA, and

aviation industry must work together to try to eliminate long onboard delays and provide for proper passenger care during these instances. Contingency planning for these situations is critical. I am pleased that the DOT has started a rulemaking to address many of these issues and I look forward to hearing from our DOT witness on the Department's progress.

The airlines' failure to adequately implement a passengers' bill of rights in 1999, combined with the DOT IG's recommendations, spurred this Committee to include specific customer service provisions in the FAA reauthorization bill in the last Congress, which passed the House on September 20, 2007. H.R. 915, the "FAA Reauthorization Act of 2009", goes even further to enhance consumer protections, decrease delays, and improve contingency planning. Under H.R. 915:

- Air carriers and airports are required to have emergency contingency plans, approved by DOT, detailing how air carriers and airports will deplane passengers following excessive delays. DOT will have the authority to assess a civil penalty against an air carrier or airport that fails to adhere to an approved contingency plan;
- FAA is required to convene schedule reduction meetings if aircraft operations exceed hourly rates and are likely to significantly adversely affect national or regional airspace;

- DOT IG is directed to review airline flight delays, cancellations, and associated causes;
- Air carriers are required to include on their websites and electronic boarding passes the DOT consumer complaint hotline number and the contact information for both the DOT's consumer protection division and the air carrier; and
- Airports used by an air carrier for flights in foreign air transportation must provide for the use of the airport's terminal, to the maximum extent practicable, for the processing of passengers arriving at the airport on such a flight in the case of an excessive tarmac delay.

I strongly support these provisions and believe they help ensure that there are no repeats of past cases in which passengers have been left to sit on the runway for as long as nine hours without adequate food or water.

Thank you again, Chairman Costello, for your leadership on these issues. I want to thank the witnesses for sharing their testimony with us today.

Testimony of James M. Crites

Executive Vice President of Operations

Dallas/Fort Worth International Airport

Before the Subcommittee on Aviation

Committee on Transportation and Infrastructure

U.S. House of Representatives

May 20, 2009

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Written Remarks of James M. Crites

Chairman Costello, Ranking Member Petri, and members of the Committee, good afternoon, and thank you for inviting me to participate in this important hearing. I am Jim Crites, Executive Vice President of Operations for the Dallas/Fort Worth International Airport.

I also serve as the Aviation Group Chair for the Transportation Research Board, part of the National Academy of Sciences.

I am here today to provide testimony regarding airport contingency planning. I'd like to begin by saying that safe flight is accomplished through close industry-wide partnership, whereby effective planning, execution and after-action refinement of best practices are accomplished through continuous communication, collaboration and coordination across all service providers. Contingency planning is no different. In fact, given the increased demand for a rapid effective response, there is an even greater need and sense of urgency behind these close knit partnerships well beyond normal operations.

Whether an emergency is caused by significant adverse weather, or concern regarding a highly contagious disease, it is recognized that all essential service providers actively partner to address flight operations and passengers' needs. In reality, it has largely been left to the airlines and Federal Aviation Administration (FAA) to address all of the issues that must be addressed, but in fact we have learned that there are critical services that can only be provided by the other aviation stakeholders such as airports, the Transportation Security Administration (TSA), Customs and Border Protection (CBP), concessionaires and local commercial ground transportation service providers (see Slide #2 of attached presentation).

The good news is that the entire industry has reached agreement regarding this as demonstrated by the development of the Contingency Planning Guidelines Document by the Department of Transportation (DOT) National Task Force To Develop Model Contingency Plans To Deal With Lengthy Airline On-Board Ground Delays (Task Force).

The plan calls for all stakeholders to share their existing operational and contingency plans with one another, to identify the gaps in providing needed services, to refine and integrate their existing operational and contingency plans to address these gaps, to formulate the means for providing shared situational awareness so as to ensure that all parties are aware of what is occurring and to enable mutual support to address needs, and finally to share the lessons learned at the conclusion of an incident so as to ensure ongoing response plan effectiveness and continuous improvement (see Slide #3 of attached presentation).

Specifically, it calls for airports and their associated concessionaires and ground transportation service providers to stay open for business, for TSA and CBP to have staff available to process passengers as the situation warrants, and for shared communication between the airlines and airports to provide for the ground handling and deplaning of passengers so as to avoid the types of unacceptable situations that are experienced by passengers stranded on aircraft due to weather or system disruptions (see Slide #4 and #5 of attached presentation).

Diverted flights are specifically called out for special attention in this plan. What it recommends is a refinement to the existing FAA and airline decision-making model when having to divert a flight to an alternate airport. Avoiding the diversion of an international arriving flight to an airport lacking CBP resources is advised (see Slide #6 of attached presentation). As previously mentioned for impacted airports, it identifies the need for the selected diversion airport team to be available and open for business to properly receive and process these flights. This includes, as was mentioned earlier, the ability to gate or properly ground handle the aircraft, to deplane passengers, and to provide concessions support and TSA passenger screening as may be required.

Under the leadership and at the request of this Subcommittee, DOT earlier this year issued a Notice of Proposed Rulemaking (NPRM) for enhancing passenger protections by requiring airline contingency plans. While a final rule has not yet been issued, we

believe that it is important that airline plans include a requirement to coordinate their plans with all airports at which they provide scheduled or charter service. Only through such coordination and partnership can plans be developed that address the issues that arise during irregular operations and tarmac delays.

I'd now like to talk to the value of this partnership as it relates to emergency response to contagious disease outbreaks or pandemics.

First, I would like to point out that extensive partnering has been developed and effectively deployed at the local airport level to address diseases such as SARS, Bird Flu Influenza, Ebola and the like. Additional partners are brought to the table including the Centers for Disease Control and Prevention (CDC), World Health Organization, National Institutes of Health and local public health officials to provide effective, real-time, and tailored response guidance (see Slide #7 of attached presentation). These partners, in concert with the aviation associations, FAA, airlines and airports currently address a wide variety of medical concerns, including yearly flu season disease outbreaks. Unfortunately we had an opportunity to test the system on April 28 at Baltimore Washington International Thurgood Marshall Airport (BWI) when an AirTran Airways flight arriving from Cancun, Mexico had two individuals on board exhibiting flu-like symptoms. AirTran contacted BWI officials who activated their emergency plan, which for this type of incident included contacting the CDC quarantine station in Washington, DC. While the two individuals were found not to have the H1N1 flu, it showed the system worked.

Can we do better, absolutely! While public health issues vary greatly, a process for aligning stakeholders at a level similar to that developed in the Contingency Planning Guidelines Document does not yet exist. I know that DOT is working with Airports Council International-North America (ACI-NA), the Air Transport Association (ATA) and the International Air Transport Association (IATA), as well as CDC and the Department of Homeland Security (DHS) on such a process. It will be important that the plan which results from this work provide a flexible yet standard approach to enable value-added

refinement to how our nation and aviation system respond to a future pandemic incident.

In summary, the process identified during the DOT Task Force for planning, execution and after-action refinement of contingency plans works. The challenge is to ensure continuous communication, collaboration and coordination across all service providers to address not only irregular operations but the wide variety of critical situations that airports experience (see Slide #8 of attached presentation).

I have one final thought regarding irregular operations, and that is to note that with rising load factors on aircraft comes a greater need to provide sufficient capacity to accommodate flight operations. In years past with lower load factors, airlines were capable of supplying enough seats so that the vast majority of passengers who might have encountered extended delays due to adverse weather conditions or other causes could complete their intended travel on the day of travel. However, as the challenges of maintaining what I would refer to as Ramp Capacity increase during periods of lightning or freezing precipitation, so does the rise in the number of passengers who find their duration of travel extended because record high load factors mean that fewer seats are available following a major delay. This too is a cause of serious concern to our passengers, and can serve as a driving force behind the airlines' desire to complete as many flight operations as possible during periods of adverse weather which in turn can lead to extended tarmac delay. As such, I would urge that we as an Aviation Industry strive to explore potential remedies to this situation as well.

In closing, I want to thank you for your support of the funding necessary for airports to be able to finance safety and capacity infrastructure. Your support of an increase in the Passenger Facility Charge (PFC) user fee as well as an increase in Airport Improvement Program (AIP) funding is greatly appreciated. Also, as Chairman of the Aviation Group for the Transportation Research Board, I want to express my sincere appreciation to this Subcommittee which helped to create and fund the highly effective Airport Cooperative Research Program. We are currently entering our fourth year of

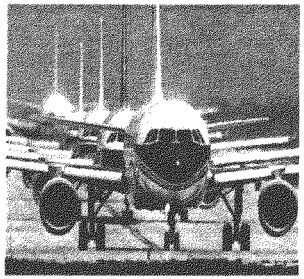
research aimed at finding practical, near-term solutions to the aviation safety, security and environmental challenges facing airports today.

Again, thank you for the opportunity to participate in this hearing. I look forward to responding to your questions.

Subcommittee on Aviation
Committee on Transportation and Infrastructure
U.S. House of Representatives

The Development of Model Response Plans
May 20, 2009

A Presentation by
James M. Crites
Co-Chair Working Groups 2 & 3
DOT TARMAC DELAY TASK FORCE

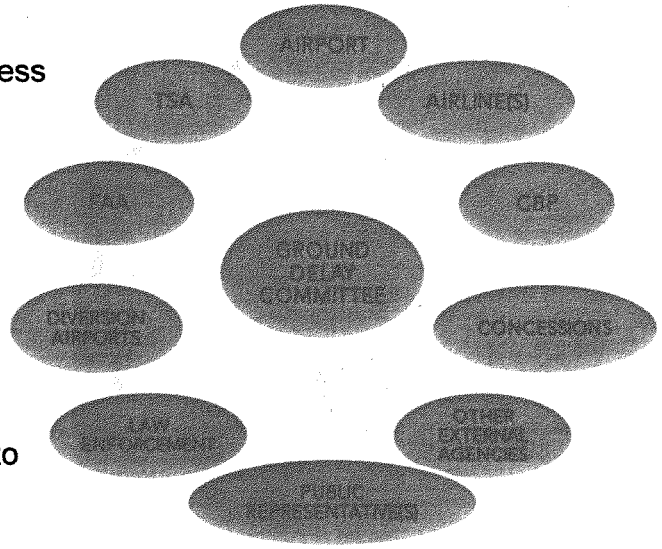


DFW

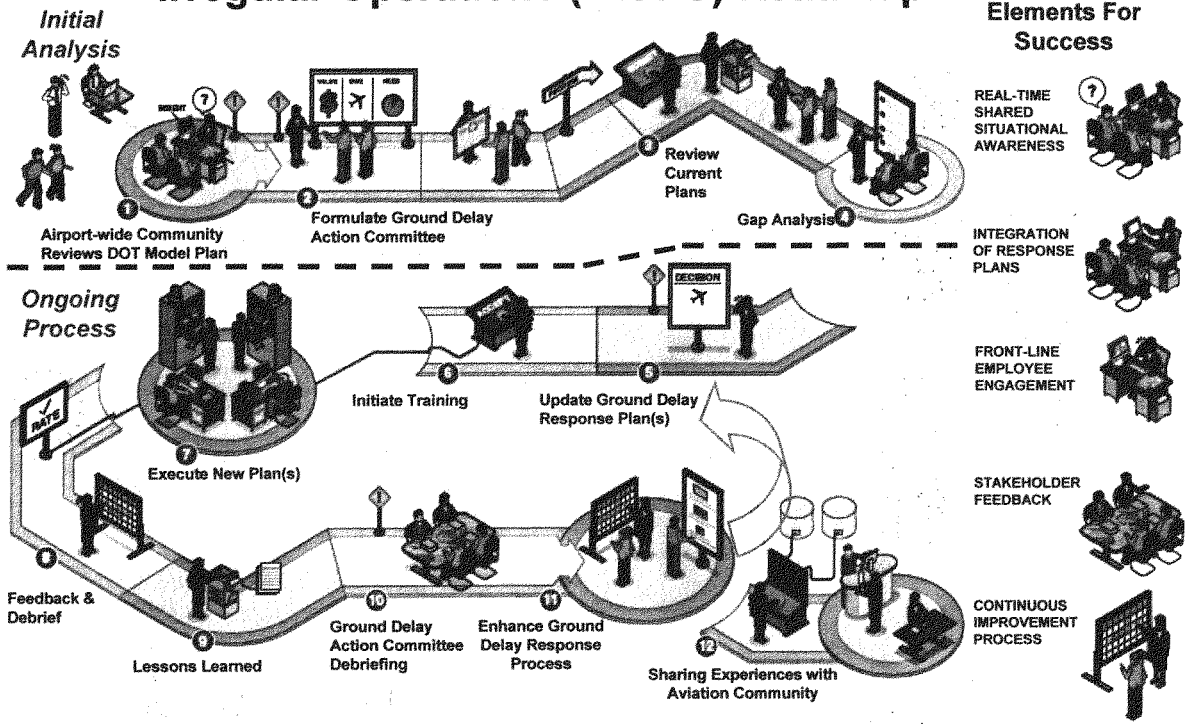
Irregular Operations Model Response Plan Development

Overview of Our Accomplishments

- A Team Approach is Key to Success
- C³ Serves as Our Foundation
- Developed Solid and Holistic Guidance to Enable Effective Response
- Developed a Roadmap That is Flexible and Easy to Follow
- Identified Deplaning Parameters to Guide Local Ground Delay Committees



Irregular Operations (IROPS) Roadmap



Flexible and Easy to Follow

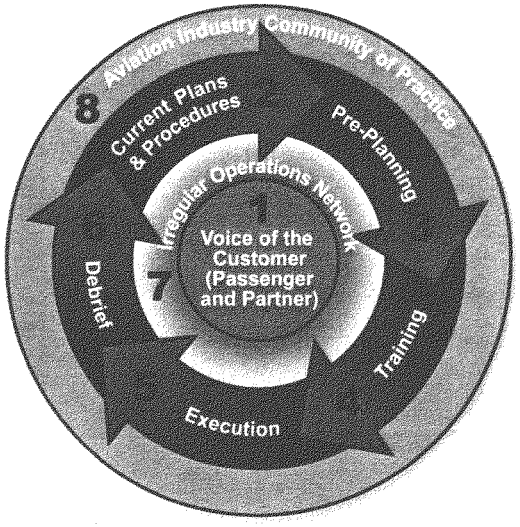
Concept © May 2008

Irregular Operations Planning Process

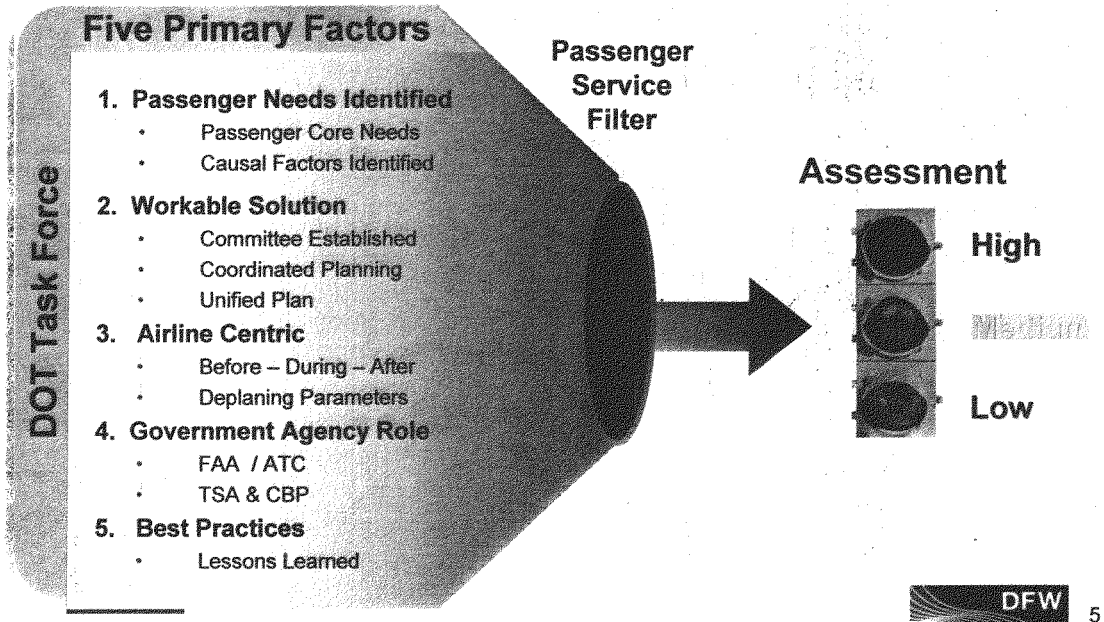
The Process: Before, During and After by all Relevant Parties

Current Plans and Procedures

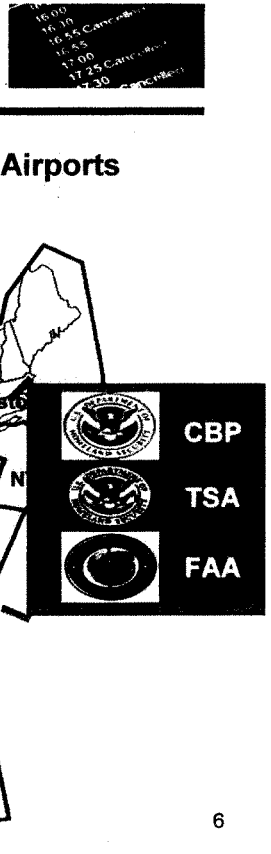
1. Voice of the Passenger/ Partner
2. Current Plans & Procedures
3. Pre-Planning
4. Training
5. Execution
6. Debriefing
7. Irregular Operations Network
8. Aviation Industry Community of Practice



Guidance That Can Be Tailored To Address The Local Situation

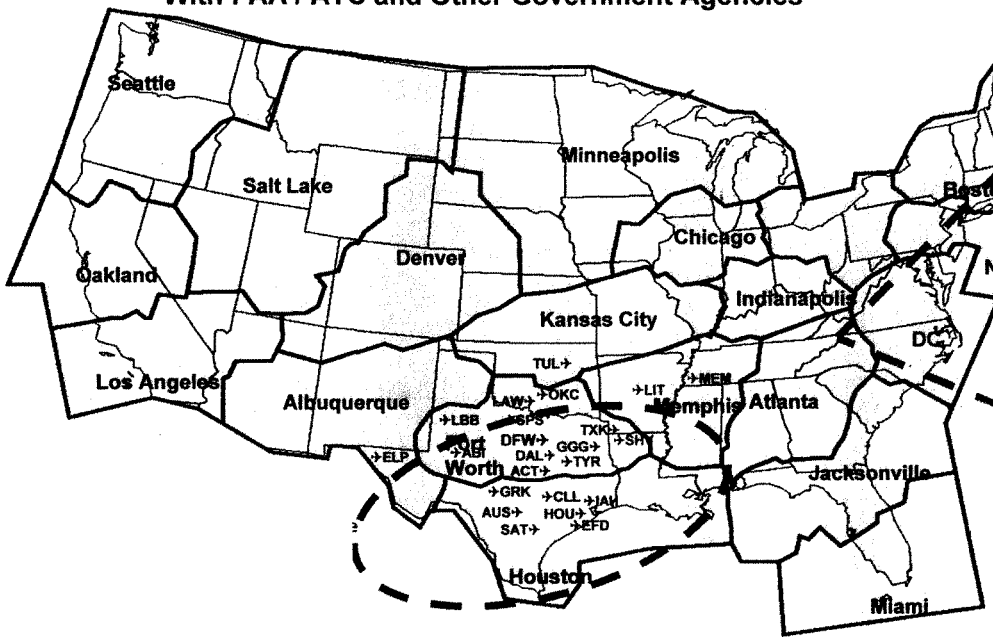


Extending C^3 to Enhance Effectiveness



Across Regional Areas Between Hub Airport and Diversion Airports

- With FAA / ATC and Other Government Agencies

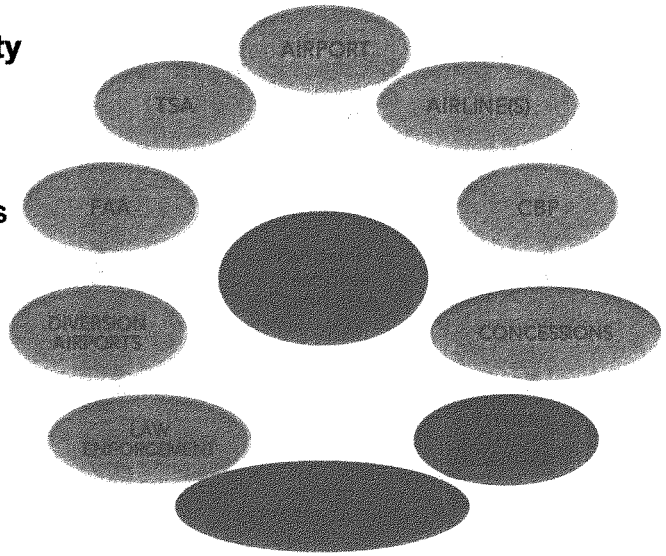


Model Pandemic Response Plan Development

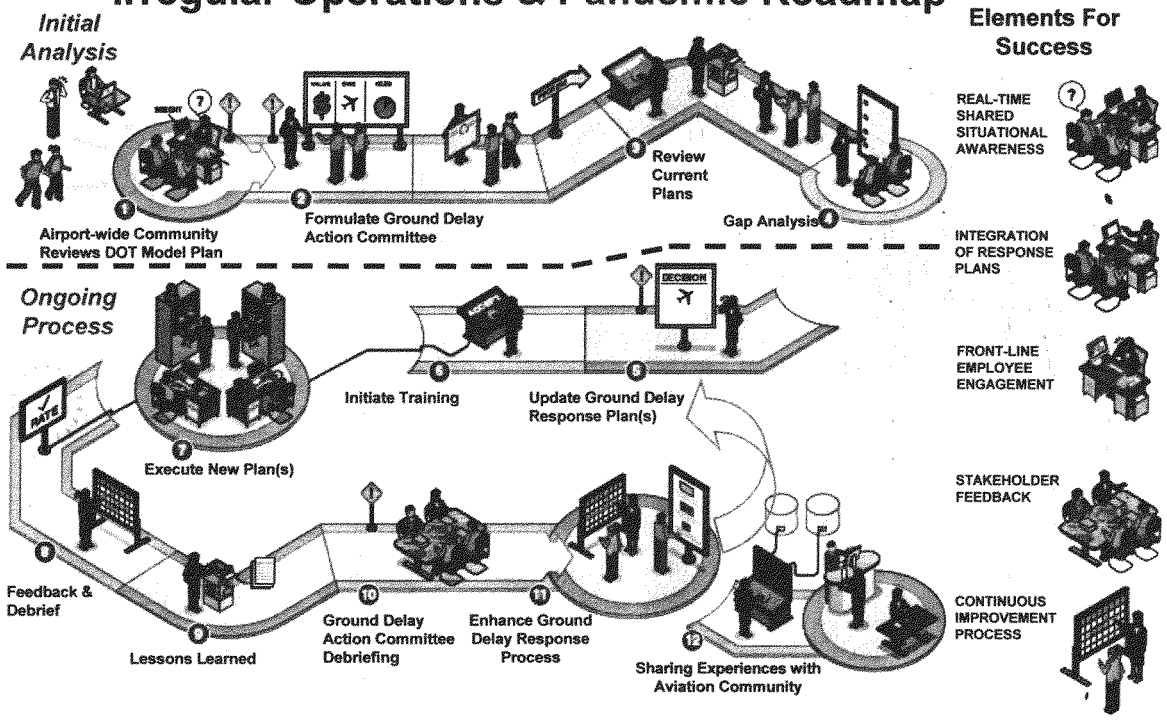
Leveraging our Partnerships and IROPS Roadmap

Overview of Our Accomplishments And Roadmap to Enhanced Capability

- Extensive Partnering Already to Address SARS, Bird Flu, Ebola, etc.
- A Team Approach is Key to Success
  - Airport, Airlines, FAA, DHS
  - **CDC, WHO, NIH, Local Heath Officials**
- C^3 Serves as Our Foundation
- Developed Solid and Holistic Guidance to Enable Effective Response
- Build Upon Our Roadmap and Ensure That it is Flexible and Easy to Follow



Irregular Operations & Pandemic Roadmap



Flexible and Easy to Follow

Concept © May 2008

JOINT STATEMENT OF CHRISTA FORNAROTTO, ACTING ASSISTANT SECRETARY FOR AVIATION AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION AND NANCY LOBUE, ACTING ASSISTANT ADMINISTRATOR, AVIATION POLICY, PLANNING, AND ENVIRONMENT, FEDERAL AVIATION ADMINISTRATION, ON AVIATION CONSUMER ISSUES: EMERGENCY CONTINGENCY PLANNING AND OUTLOOK FOR SUMMER TRAVEL , BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON AVIATION, MAY 20, 2009.

Chairman Costello, Ranking Member Petri, Members of the Subcommittee:

Thank you for inviting us here today to discuss issues facing aviation consumers and the outlook for air travel in the United States this summer. Both the Office of the Secretary of the Department of Transportation (DOT) and the Federal Aviation Administration (FAA) continue to work hard to ensure the welfare and safety of consumers. This joint testimony will detail recent actions that each has undertaken in this effort. Specifically, we will be discussing the status of our current consumer protection and regulatory compliance initiatives, the FAA's on-going efforts to reduce congestion-related delays, including the actions affecting the three busy New York airports, and, finally, our work in coordination with other Federal agencies in connection with the H1N1 outbreak.

In 2007, complaints by airline consumers filed with the Department spiked sharply. This spike was in part due to deteriorating on-time performance and incidents such as those that occurred in December 2006 and February 2007 in which passengers on-board many aircraft were stranded for hours on airport tarmacs while waiting for their flights to take off. Since 2007, however, data reported to the Department show improvements in the quality of air service:

- In 2008, the Department received 10,643 air service complaints from consumers, compared to 13,180 complaints received in 2007. This downward trend has continued. For the first quarter of 2009, the Department received 2,164 air service complaints, compared to 3,122 complaints received during the first quarter of 2008, and 2,887 complaints received during the first quarter of 2007.

- The U.S. carriers reporting on-time performance data recorded an overall on-time arrival rate of 76.0 percent for January through December 2008, compared to 2007's 73.4 percent rate. For the first quarter of 2009, the on-time performance rate was 79.2 percent, compared to 70.8 percent during the first quarter of 2008, and 71.4 percent during the first quarter of 2007.

- The U.S. carriers reporting mishandled baggage data posted a mishandled baggage rate of 5.26 reports per 1,000 passengers in 2008, compared to 2007's rate of 7.05. For the first quarter of 2009, the mishandled baggage rate was 4.29, compared to 6.81 for first quarter of 2008, and 8.05 for January-March 2007.

- In 2008, the involuntary oversales ("bumping") rate was 1.10 per 10,000 passengers, compared to 1.12 for 2007. For the first quarter of 2009, the bumping rate was 1.31 per 10,000 passengers, compared to 1.37 for the first quarter of 2008, and 1.46 for the first quarter of 2007.

- Despite applying a different performance standard, the number of chronically delayed flights dropped from 507 in 2007 to 244 in 2008. In the first quarter of 2009, there were 32 chronically delayed flights compared to 79 in the first quarter

of 2008 and 183 in the first quarter of 2007. In 2008, the Department's Office of Aviation Enforcement Proceedings (Enforcement Office) began using an expanded definition of what constituted a chronically delayed flight, i.e., a flight that was delayed more than 15 minutes on more than 70% of the flight's operations per quarter, with a minimum of 30 operations. Previously, the Department's standard used a minimum of 45 operations per quarter.

Although these statistics show a trend in the right direction, they do not necessarily indicate that the underlying problems that they measure are being solved. Rather, much of the improvement may be attributable to capacity cuts by airlines, which result in fewer planes and fewer passengers in the air. With this in mind, the Department is committed to protecting consumers and ensuring that the quality of air service continues to improve, even when airlines return to adding capacity as the economy recovers. To this end, more can and will be done.

We recognize that a number of steps have recently been undertaken to improve the quality of air service, including increasing the resources of the Enforcement Office, which acts as the prosecuting office for aviation consumer enforcement cases, organizing a task force to develop practices for mitigating the hardship caused by extended tarmac delays, raising the amount of civil penalties assessable for violations of certain laws and regulations protecting air travelers, improving the reporting of tarmac delays for diverted and cancelled flights, and increasing the amount of compensation for passengers who are involuntarily denied boarding. Currently, we are reviewing the effectiveness of these steps and considering additional ones.

In December 2008, we issued a notice of proposed rulemaking (NPRM) proposing to enhance airline passenger protections by designating the operation of a chronically delayed flight as an unfair and deceptive practice and by requiring carriers to (1) adopt contingency plans for lengthy tarmac delays and to incorporate them in their contracts of carriage, (2) respond to consumer complaints, (3) publish delay data, and (4) have customer service plans, incorporate them into their contracts of carriage, and audit their compliance with their plans. We are currently evaluating the NPRM and the comments filed in response to it and we will determine the next steps associated with this NPRM once we are through with our evaluation.

While consumer protection is a priority for the Department, so too is congestion. The Department shares the Committee's longstanding concern regarding congestion, especially in the New York area. The FAA's key mission is to provide the safest, most efficient aerospace system in the world. Although it is extremely safe, the current system is not performing adequately. We saw the difficulties in air travel during the congested summer of 2007. The Next Generation Air Transportation System (NextGen) will change the way the system operates – reducing congestion, noise, and emissions, expanding capacity and improving the passenger experience while enhancing safety. NextGen is needed to bring to air transportation twenty-first century technology and flexibility to ensure reliability and predictability for airlines and passengers.

Even in the face of falling passenger demand and a reduced number of airline flights, we still experience congestion in our busiest airspace. We know that we must be poised to handle future demand that will surely return as the nation's economy improves. FAA's

preliminary modeling of a series of NextGen capabilities shows that by 2018 total flight delays can be reduced by 35-40 percent over the current system, saving almost a billion gallons of fuel and the emissions produced.

Secretary LaHood has made clear that delivering the capabilities of NextGen, is a key priority for him and this Administration. We also appreciate the support that this Committee, as well as Congress as a whole, has given us to move forward with NextGen.

The summer of 2007 was particularly troublesome and filled with delays, especially in the New York metropolitan region. During the months of June – August 2007, there were 1.9 million scheduled flights nationwide – and 28% of those were delayed, according to information provided by carriers that report delay data to the Bureau of Transportation Statistics (BTS). In the New York area it was worse: 37% of flights were delayed at LaGuardia Airport (LGA), John F. Kennedy International Airport (JFK) and Newark Liberty International Airport (EWR), which ranked as three of the five most delayed airports in the country. Causes of delay included over scheduling, mechanical issues for airlines, weather, late-arriving aircraft, and security difficulties.

Nationwide, the FAA has been putting a range of solutions into place. New runways provide significant capacity and operational improvements. On November 20th, three major new runways opened: at Seattle-Tacoma, Washington Dulles, and Chicago O'Hare International Airports. The Seattle runway is expected to cut local delays in half

by increasing capacity in bad weather by 60 percent, while the new runway at Dulles will provide capacity for an additional 100,000 annual operations.

The new Chicago runway adds capacity for an additional 52,300 annual operations and is a part of the greater O'Hare Modernization Program (OMP) that reconfigures the airport's intersecting runways into a more modern, parallel layout. The OMP substantially reduces delays in all weather conditions and increases capacity at the airfield, allowing O'Hare to meet the region's aviation needs well into the future.

On February 12, a runway extension at Philadelphia International Airport was completed, helping reduce delays there. Looking forward for the next three years, new runways will open at Charlotte and Chicago O'Hare. Eleven other runway projects are in the planning or environmental stage at Operational Evolution Plan (OEP) airports through 2018.

The FAA has been highly proactive in anticipating and planning to reduce delays nationally. We have been monitoring airline schedules six months into the future, in order to better anticipate potential problems at the major airports before they occur and we are ready to respond with "Congestion Action Teams" to any airports where delays appear likely to increase significantly.

While the FAA also strives to maintain as efficient an air traffic system as possible, the reality is that delays are caused for many different reasons, including weather. Increasing our ability to deliver air traffic arrivals and departures safely in bad weather is also one of

the areas NextGen is poised to tackle. We are working on capabilities that allow for continued use of parallel runways in low visibility conditions by providing precise path assignments that provide safe separation between aircraft assigned on parallel paths, restoring capacity and reducing delays throughout the system.

We are already safely reducing separation between aircraft approaching parallel runways at Boston, Cleveland, Philadelphia, St. Louis and Seattle. In good visibility, Seattle's pair of parallel runways, together, could handle roughly 60 operations per hour; poor visibility conditions cut that rate in half. Even in poor visibility, these capabilities now safely allow a rate of about 52 operations per hour, a significant improvement for the airport and its users. We are also beginning to see similar benefits in Boston.

We have already seen these improvements pay dividends. In the summer of 2008, we saw improvements in delays. From June – August 2008, nationwide there were 1.8 million scheduled flights, with 23% delayed, according to BTS data. The largest share of those delays can be traced back to weather – 44%, while the remainder was caused by a combination of other factors.

As we gear up for the summer of 2009, we are continuing our work on implementing measures to minimize delays. The economic downturn has resulted in lower passenger demand with a corresponding decline in overall operations and delays. However, in certain congested areas, we are not seeing as much of a downtown in traffic or delays. For example, in New York, the drop in the demand for travel has been about 5%,

compared to other large hubs, such as Chicago, which is down 7.5%, and Houston which is down nearly 10%. Consequently, the reduction in delays is not as pronounced in New York as in other parts of the country. With the decreased operations this year, we would expect on-time performance to be higher than last summer, but will be dependent on the severity of summertime weather.

Despite the downturn in traffic, FAA is continuing to work aggressively to implement operational and structural improvements so we are prepared to handle the inevitable up-tick in traffic in the future. For example, the Automatic Dependant Surveillance Broadcast system (ADS-B), a system that moves air traffic control from a system based on radar to one that uses satellite-derived aircraft location data, is in use in southern Florida and in the Gulf of Mexico, where we have never had radar coverage before. We are now on our way to national deployment of broadcast services.

The Department anticipates some impact to operations because of various runway construction improvements. The Port Authority of New York and New Jersey is currently in the process of working on four taxiway and utility projects at JFK that has closed a runway there for the past few weeks. Other runway construction will necessitate runway closures at JFK from March-June 2010 and from September 16 - 29, 2010. During the construction, three of the four runways at JFK will always be available and every effort is being made to minimize the impacts to operations during the construction project. These efforts include the Port Authority working with the airlines and the FAA

to phase the project and include strong contracting terms to make sure the project gets done on time.

The FAA maximizes the use of airspace, especially in congested areas such as New York, through targeted airspace and procedures enhancements. Continuing work in the New York area includes integration of precision procedures such as area navigation and required navigation performance (RNAV/RNP), relocation and expansion of airways, airspace reconfiguration, and creation of optimal descent procedures. We have also limited scheduled operations at LGA, JFK and EWR and continue to work on the New York/New Jersey/Philadelphia (NY/NJ/PHL) Airspace Redesign, the necessary prerequisite to successful implementation of NextGen. The FAA has also accelerated the installation of Airport Surface Detection Equipment, Model X (ASDE-X) at JFK, which in addition to increasing safety, has also increased surface situational awareness for controllers and airlines resulting in more efficient operations.

A number of the operational improvements we have made so far are a result of collaborative efforts derived from the New York Aviation Rulemaking Committee (NY ARC or ARC), which convened in the fall of 2007 in order to prevent a repeat of the summer 2007 in New York. One of the products from the ARC was a list of ideas from various stakeholders that would help improve air traffic control operations, totaling 77 in all. Of these 77, FAA has substantially completed 30. Thirty-seven of these are ongoing, in various stages of assessment or implementation. Two of these include the removal of a hotel and a waste facility and may be outside the FAA's authority to control. Of the

remaining 10, seven are part of our NextGen planning and implementation, while the remaining three are dependent upon the successful completion of NY/NJ/PHL Airspace Redesign.

In our ongoing efforts to reduce delays, the FAA plans to continue to keep the limits on scheduled operations in place at LGA, JFK and EWR, while this Administration considers its next steps with regard to a long-term congestion management solution for the New York area airports. Just last week, Secretary LaHood announced that DOT is proposing to rescind the slot auction rules that were finalized for LaGuardia, JFK and Newark last October and has promised to talk with aviation and consumer stakeholders in New York this summer about the best way to move forward. The FAA continues to seek, develop, and implement congestion and delay solutions system-wide. While we have a strong focus in New York because of its impact on the rest of the NAS, we continue to work to improve the safety and efficiency of the entire system nationwide.

The recent H1N1 flu outbreak is another important issue that is getting significant attention from the Department. Let me start by reiterating an earlier comment by Secretary LaHood: It is safe to fly. And one of the reasons it is safe to fly is that the Department of Transportation and the FAA, together with several other government agencies, have been working hard to ensure that our aviation system is prepared to handle the kinds of concerns raised by the recent H1N1 outbreak.

The Department has been participating in an interagency working group led by the Homeland Security Council since 2006. We prepared and exercised a Department-wide pandemic influenza plan. Our operating administrations also prepared and exercised their own plans. Consequently when the 2009 H1N1 outbreak occurred, a response scheme was already in place and we were ready to take immediate action. Even though H1N1 did not exactly follow the model that the U.S. Government had anticipated (it was a swine flu outbreak in North American rather than an avian-based influenza coming from overseas), the planning components and exercises previously conducted ensured that DOT staff could rapidly and appropriately respond as the situation warranted. Over the weeks following the initial outbreak the measures taken and the communications initiated were scaled up and then down as more information about the virus became available.

During the initial stages of the 2009-H1N1 outbreak, the US government opted to not conduct either entry or exit health screening of international passengers, based on CDC's technical expertise and following advice from the World Health Organization. Nonetheless, questions were raised regarding the airlines' authority to deny boarding to a passenger who may have the 2009 H1N1 virus. Airlines themselves do have the authority to refuse transport to any person who has a serious communicable disease to the extent permitted by their contract of carriage and the Department's disability regulation. The Department's disability regulation allows an airline to refuse transportation on the basis of a communicable disease if the passenger's condition is both readily transmitted under conditions of flight and represents a significant health risk to others and a less restrictive alternative than refusal to transport is not available. Additionally, CDC has

authority to quarantine inbound international passengers suspected of having specific communicable disease including any "novel influenza virus of pandemic potential."

Thank you again for this opportunity to testify. We would be happy to answer any questions that you may have.

U.S. House of Representatives
Committee on Transportation and Infrastructure

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

Washington, DC 20515

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

June 18, 2009

The Honorable Christa Fornarotto
Acting Assistant Secretary for Aviation
and International Affairs
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Acting Assistant Secretary Fornarotto:

On May 20, 2009, the Subcommittee on Aviation held a hearing on "Aviation Consumer Issues: Emergency Contingency Planning and Outlook for Summer Travel."

Attached are questions to answer for the record. I would appreciate receiving your written response to these questions within 14 days so that they may be made a part of the hearing record.

Sincerely,

Jerry Costello

Jerry F. Costello
Chairman
Subcommittee on Aviation

May 20, 2009
Subcommittee on Aviation
Hearing on
Aviation Consumer Issues: Emergency Contingency Planning
And Outlook for Summer Travel
Questions for the Record
To:
The Honorable Christa Fornarotto
Acting Assistant Secretary for Aviation and International Affairs
U.S. Department of Transportation

QUESTION 1: Ms. Fornarotto, were there any "lessons learned" from the H1N1 pandemic that can be applied in future pandemic cases?

RESPONSE: During the spring H1N1 outbreak we quickly learned that the close collaboration and networks previously established with transportation sector partners that were in place long before the H1N1 wave hit proved invaluable in keeping information flowing rapidly in both directions. The prompt and frequent information exchange that resulted during the spring H1N1 outbreak kept transportation infrastructure operators informed while also helping us to rapidly learn of any transportation issues that came up.

We first heard on Friday, April 24 that Mexico was experiencing some type of health issue. At that early date, however, information was scarce. Nonetheless, we used this incomplete but potentially serious information to reach out to aviation industry associations. Beginning that day and continuing for more than two weeks we communicated daily with aviation industry representatives. These communications allowed us to quickly gather information and share it with stakeholder groups so they were able to accurately and promptly inform their members.

Similar outreach took place in transit and rail. The Federal Transit Administration (FTA) quickly assessed transit impacts from the evolving outbreak through their established information networks with transit operators. FTA forwarded guidelines on pandemic planning and response measures to transit system operators, including advisories on specialized cleaning procedures. Existing information channels were used to assess impacts on ridership and other effects of the H1N1 wave. In rail the Federal Railroad Administration (FRA) hosted an industry conference call on April 28 with representatives from Class I Railroads (Medical, Security, and Operations Staffs), FTA, Transportation Security Administration (TSA), and Amtrak as well as a number of associations including the American Short Line and Regional Railroad Association and the American Public Transit Association (APTA). Federal response actions were detailed and the procedure for requesting a waiver of FRA regulations due to emergencies was explained. (No waivers requested to date.) FRA also established a protocol to allow affected systems to report H1N1 impacts directly to FRA.

The National Highway Traffic Safety Administration (NHTSA) worked with the CDC and other agencies to develop "*Interim Guidance for Emergency Medical Services Systems and 9-1-1 Public Safety Answering Points for Management of Patients with Confirmed or Suspected Swine-*

Origin Influenza A (H1N1) Infection". This was quickly completed, posted on the CDC and ems.gov websites, and e-mailed to the sector all before the end of April.

QUESTION 2: Ms. Fornarotto, how does the Department of Transportation (DOT) interact and coordinate with the federal lead agency during a pandemic influenza?

RESPONSE: The U.S. Department of Transportation (DOT) maintains a consistent level of emergency preparedness through the 24 hour, 7 day per week emergency operations center, the DOT Crisis Management Center (CMC). The CMC is operated within the Secretary's Office of Intelligence, Security, and Emergency Response (S-60).

To ensure policy issues were appropriately coordinated across the U.S. Government, S-60 staff participated in daily video teleconferences with the Domestic Readiness Group (DRG) as led by the White House National Security Staff (NSS). These calls provided a forum for interagency partners to exchange information and provide a consistent status update on the H1N1 outbreak. Information from these calls was disseminated to representatives from each of DOT's Operating Administrations during the daily CMC brief.

For operational requirements and information, DOT primarily worked through the CMC to coordinate with other department's operation centers. "Common Operating Picture" reporting was provided for H1N1 to Department of Homeland Security's National Operation Center (DHS/NOC). Additionally, DOT had frequent coordination with the Department of Health and Human Services (HHS) Secretary's Operation Center regarding the safety of the traveling American public and public/private transportation workers.

QUESTION 3: Ms Fornarotto, the Government Accountability Office (GAO) reported in June 2009 that during a pandemic influenza event, the Federal Aviation Administration (FAA) may have difficulty communicating with air traffic controllers on pandemic procedures via the intranet or email. What is the DOT/FAA doing to address this weakness?

RESPONSE: Due to safety and security reasons, operational positions at air traffic control facilities do not use commonly available Internet or e-mail applications as the computing stations used by air traffic control specialist must be isolated from non-operationally necessary programs to assure data integrity and availability. We do not consider this a weakness but rather a strength because this is in accord with best practices, ensures optimal operational availability, and supports our safe and secure operations. Critical operational information is communicated as the situation dictates; time tested and approved methods include one-on-one briefings, weekly team briefings, and pre-duty 'read and initial' self–briefs that must be completed prior to assuming an operational position for the assigned shift. E-mail and intranet websites are considered administrative applications that are subordinate to operations and any time-critical communication necessary for operations. Non-operational information can and is communicated via weekly team briefings, e-mail, internet or intranet web sites, webcasts, or employee bulletin boards. In recent years, all FAA employees have been provided an FAA email account for work use which may be accessed by administrative or other personal computers. Thus, there are a multitude of methods available to communicate pandemic influenza procedures which the FAA

will use as the nature of the information dictates.

QUESTION 4: Ms Fornarotto, the GAO's recent report on pandemic influenza stated "[A]ir traffic controllers proficient in one area of airspace cannot replace controllers proficient in another [area of] airspace without training and certification. This could result in reduced air traffic management services [during a pandemic outbreak]." What is DOT/FAA doing to address this issue?

RESPONSE: For many decades the FAA has handled myriad situations that adversely impact the Nation's airspace and air traffic. The FAA uses each experience to hone contingency and emergency plans. The primary guidance on managing the national airspace in other than optimal conditions is contained in FAA Order, JO 1900.47b, Contingency Plans; each facility is required to write and keep current an emergency plan.

Air traffic controllers proficient in one area (or operational position) cannot readily assume responsibilities of another unless they complete training and are certified as proficient. Air traffic controllers are trained on multiple operational positions for which they must maintain currency (e.g. work that position with regularity to ensure proficiency and maintain expert knowledge vital to critical situations.) At facilities where airspace is divided up into sectors, controllers are trained and certified to provide air traffic control services in a given number of sectors. At facilities where functional positions define areas of responsibilities, controllers are trained and certified to provide air traffic control services for that position (e.g. ground control, local control, etc.) However, an air traffic controller cannot work a sector or position that he/she is not certified to work or where currency is not maintained.

U.S. government pandemic planning indicates that absenteeism can be at high as 40% during a peak pandemic wave due to illness, caring for others or for childcare when schools close. Absenteeism of this magnitude could result in a reduction of air traffic control services that a facility can provide in each sector or position. We have planned and prepared for this possibility.

Facility emergency plans already address many different crisis situations including pandemic influenza, severe weather, natural disasters, infrastructure failures, etc. Each emergency plan outlines prioritized services, airspace configurations (combining sectors/positions) and other measures to allow continued air traffic control services. Facility managers have many operational procedures and tools including a system to manage air traffic in the National Air Space via the Enhanced Traffic Flow Management System (ETFMS). Further, human resource tools can also be used if needed for staffing shortages, such as the recall of recently retired air traffic controllers back to duty. Recalling recently retired controllers who meet medical and age qualifications can help during a crisis because these temporary replacements only need minimal training and can typically be certified quickly.

TESTIMONY OF

PATRICIA A. FRIEND
INTERNATIONAL PRESIDENT

ASSOCIATION OF FLIGHT ATTENDANTS – CWA, AFL-CIO

BEFORE

THE SUBCOMMITTEE ON AVIATION OF THE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC

MAY 20TH, 2009

Association of Flight Attendants – CWA, AFL-CIO
501 Third St. NW
Washington, DC 20001
202-434-1300

Thank you, Chairman Costello for giving us the opportunity to testify today. My name is Patricia A. Friend and I am the International President of the Association of Flight Attendants – CWA (AFA-CWA), AFL-CIO. AFA-CWA represents over 55,000 flight attendants at 20 different airlines throughout the United States and is the world's largest flight attendant union. We appreciate having the opportunity to testify at today's hearing on Aviation Consumer Issues: Emergency Contingency Planning and Outlook for Summer Travel. As the front line employees responsible for the safety and security of the aircraft cabin along with the well being of the passengers under our care, we can provide a unique perspective on these issues. I am especially grateful for the Committee's recognition of the fact that it is the front line employees that can provide these helpful insights. I look forward to discussing our perspective on Emergency Contingency Planning as well as what we as front line airline employees expect for the summer travel season.

EMERGENCY CONTINGENCY PLANNING

The recent health emergency surrounding the spread of the H1N1 virus once again brought air travel and the spread of infectious diseases onboard the aircraft to the forefront of the government and the public's attention. Many of the issues, questions and concerns raised during this most recent public health emergency were similar to those raised during the SARS crisis of early 2003. Then, as now, AFA-CWA was very concerned with the well being of our members. The very nature of our jobs, in which flight attendants come in contact with hundreds and possibly thousands of individuals every day, travel to areas of disease outbreaks, and the enclosed environment of the aircraft cabin, certainly increases the likelihood of exposure to a potentially fatal disease.

We are also keenly aware of our role in the possible transmission of a disease during a public health emergency. Our interest is not only to protect our members from exposure but also to minimize the possibility of our members inadvertently spreading a disease during an outbreak.

In order to minimize the risk in both cases, AFA-CWA has in this most recent public health emergency and in previous ones, such as the SARS outbreak, called on the Federal Aviation Administration (FAA) to to issue directions to the airlines that would minimize the risk of exposure by flight attendants. We strongly believe that we must be given the tools and ability to play our part in slowing or preventing the spread of a potentially fatal disease outbreak. Flight Attendants have a role to play in containing the spread of a disease in such an emergency and as workers in a high risk environment we are entitled to protections in our work place.

AFA-CWA sent a letter to the FAA on April 27th, 2009 in the early days of the H1N1 virus outbreak requesting that the FAA issue an emergency order to all U.S. carriers requiring them to take specific steps. AFA-CWA believes that the FAA Administrator has the ability to issue such an order under 49 U.S.C. 44701(a). Unfortunately, we have still not received a response from the FAA on our request. The steps requested were:

1) Require the airlines to provide flight attendants with non-latex gloves and masks that are determined appropriate protection by the Center for Disease Control (CDC) and the World Health Organization (WHO), at least on flights to, from, and within at-risk areas. Flight attendants who opt not to wear said masks and gloves must not be disciplined.

2) At the very least, require the airlines to permit flight attendants, working on flights as defined in #1 above, to wear their own masks and gloves without any discriminatory action being taken against them.

3) Require the airlines to use established methods to communicate the importance of thorough and regular hand washing, and not touching one's face, to flight attendants (e.g., via email, website, flyers, posters) and passengers (e.g. in-flight announcement).

4) Require the airlines to allow flight attendants with flu-like symptoms (including fever above 100.4 degrees F or 38.0 degrees C, cough, sore throat, body aches, headache, chills, or fatigue) to call in sick with no negative consequences, including such absence or absences from duty being counted against the number of total absences due to illness allowed by the company in any given period.

5) Require the airlines to develop, implement and enforce passenger-screening standards, as recommended by the WHO, CDC or the relevant national health officials.

6) Require the airlines to provide appropriate guidance to flight attendants in the event that a passenger exhibits symptoms during a flight.

7) Require that all U.S. airliners flying to and from Mexico have operative potable water systems, soap and sanitary towels in place for hand washing during flight operations.

AFA-CWA strongly believes that steps like those outlined above must be a required action, not a recommended action of the carriers. It has long been our experience that unless the airlines are mandated to take specific actions, most will not take the necessary steps. In far too many cases, airline management appears less concerned with minimizing the risk of exposure to potentially dangerous illnesses than in minimizing the perception and appearance of a possible threat to health. We are clearly sympathetic to efforts to reduce the economic impact of unnecessary "panic" during a public health emergency. But we believe basic steps such as those outlined in our letter to the FAA are fundamental and necessary steps to protect the health of our members, airline passengers and the general public. Not taking such steps to reduce the spread of a disease poses a much greater long-term economic impact.

Unfortunately, many of these basic steps were not taken during the recent outbreak of H1N1 and carriers adopted a variety of patchwork policies to minimize exposure and risk. Most of the carriers represented by AFA-CWA took very minimal steps and focused on reducing the "anxiety" of the traveling public rather than taking the simple, but necessary, steps to prevent the exposure to and transmission of the H1N1 virus.

AFA-CWA leaders at twenty (20) carriers, representing major, regional and charter airlines, reported a variety of responses by airline management to the recent H1N1 outbreak. Most of these AFA-CWA carriers operate flights to and from Mexico.

As the crisis spread, the AFA-CWA International office in Washington, DC conducted a survey of each of the twenty (20) AFA-CWA represented airlines in an effort to measure the response of airline management to the H1N1 outbreak. The survey included the following questions:

1) Has your management relaxed sick leave policies during the current H1N1 Flu pandemic? For example if a flight attendant was suffering from flu like symptoms could they be assured that a sick call would not be counted against their dependability record?

2) Has your management taken your recommendations for the use of non-latex gloves and/or protective facemasks?

3) Does your management have a policy of leniency and/or flexibility for pregnant and immune compromised flight attendants to avoid flying into high risk areas?

The survey confirmed our concern that a patchwork of polices at each carrier would emerge and an effective industry-wide common sense response to this outbreak was severely lacking.

The overwhelming majority of carriers refused to relax sick call discipline rules during this time period. If a flight attendant called in sick no consideration was given to whether their illness was related to the H1N1 outbreak – meaning they had flu-like symptoms. And management would use that sick call against the flight attendant in the attendance discipline process at that carrier.

During an outbreak, government officials encouraged employees with flu-like symptoms to remain at home and avoid potentially spreading the virus. This common sense policy was largely ignored by airline management and the risks of exposure to fellow flight attendants and the hundreds of passengers a flight attendant may serve during a typical work day were risks that management knowingly encouraged by not relaxing sick call discipline procedures.

Most carriers provided latex or non-latex gloves for use by flight attendants during a flight. But many carriers placed conditions on the utilization of gloves to those flights where a passenger was suspected of exhibiting flu-like symptoms. This case-by-case utilization rule is not the type of system-wide response needed during health emergencies.

The vast majority of carriers would not agree to the use of facemasks during flight. Carriers that provisioned face masks placed onerous conditions on the use of these safety devices. Airline management's inherent view of flight attendants as marketing tools and extensions of airline advertising images reigned over concern for their employees and passengers alike. In an opposite response, one Asian carrier required facemasks for their flight attendants on certain flights into and out of H1N1 outbreak areas and insisted that the use of facemasks by flight attendants would generate a sense of security for their passengers.

Reasonable accommodations were severely lacking during this H1N1 crisis for pregnant or immune compromised flight attendants. There were few provisions allowing them to reschedule work assignments into outbreak zones or countries.

Only three (3) carriers made any significant effort to accommodate at-risk employees and re-schedule them for flights to non affected regions. Pregnant or immune system compromised flight attendants were forced to either work flights to outbreak areas or countries or to call in sick and subject themselves to possible disciplinary measures.

While the majority of carriers represented by AFA-CWA took little action on our recommended plan, some carriers did react in a common-sense manner taking every precaution to ensure that our members and their passengers were protected from exposure to the virus. Because of this variety of responses and level of action taken by the various U.S. airlines, we believe that it is the responsibility of the FAA to issue mandatory guidelines on actions that must be taken by airlines in a public health emergency. The health of flight attendants, passengers and the traveling public should not be subjected to the marketing concerns of airline management.

The lack of concrete actions taken by the FAA, once again, in this recent public health emergency continues to demonstrate to us that the FAA has once again forgotten that they no longer have a dual mandate. Their focus needs to be exclusively on protecting those that work onboard the aircraft and the millions of airline passengers rather than inconveniencing airline management or acting as the U.S. aviation tourism board.

In order to minimize the threat posed by a public health emergency, several permanent steps must be taken by the government to mitigate that threat. As well, we believe that several additional measures should be taken immediately and enforced by the FAA in cases of a public health emergency. First, in terms of permanent steps that can be taken to mitigate the threat posed by a potential public health crisis AFA-CWA believes it is necessary for OSHA like or basic OSHA workplace safety and health protections to be applied to the aircraft cabin workplace. Currently, no basic health and safety protections are afforded to flight attendants – who call the aircraft cabin their workplace.

We believe that implementation of even the most basic health protections such as sanitation standards and protections against blood borne pathogens would go a long ways toward making the aircraft cabin a much healthier environment not only for flight attendants, but passengers as well.

For example, such standards would require that an adequate supply of non-latex gloves be available on all flights and the routine use of those gloves for the collection of trash, and other duties. Some airline management have prevented the use of gloves and only in the face of an emerging public health emergency have they reluctantly allowed for the use of gloves, fearing that flight attendants wearing gloves may create a sense of "panic" or fear. Unfortunately, many airline management teams still hold the outdated view that flight attendants are primarily a marketing tool rather then our federally mandated role as inflight safety and security professionals. The routine use of the gloves is necessary to protect the health of flight attendants as well and passengers will no doubt become acclimated to seeing flight attendants taking this most basic of health protections on a daily basis.

Another permanent step that can be taken immediately relates to the aircraft's onboard water supply. It has been documented extensively and is simply matter of common sense that frequently washing one's hands greatly reduces the likelihood of contracting and spreading an illness. Unfortunately, it is not all that uncommon for a lavatory on a flight to be inoperable, thereby preventing flight attendants and passengers from washing their hands effectively. Also, often the sink in the galley, which is primarily designed for liquid disposal, will be inoperable preventing the ability to wash hands before handling of food or even on a routine basis. This is completely unacceptable and AFA-CWA has advocated that at a minimum each class of service in the aircraft cabin must have at least one operational lavatory for an aircraft to be allowed to operate.

In addition, even when the lavatories are functioning and running water is available on the aircraft to wash hands the water onboard may contain high levels of bacteria and other contaminants due to infrequent cleaning of water tanks, replacement of water, contamination from other sources and lack of monitoring the water quality. AFA-CWA has been working with the industry and regulators for several years to promote rigorous aircraft water quality standards to ensure that the water is safe and not a cause of infections. In 2007, the EPA announced proposed regulations on aircraft drinking water. AFA-CWA, Members of Congress and others expressed great concern with the inadequacy of these proposed regulations and to date, the final rule has not yet been issued.

It is important that the EPA issue a decent rule that will address a number of issues, among them disallowing the use of contaminated water for hand washing which is currently allowed by the EPA. As well, we believe that aircraft for both international and domestic flights must contain adequate supplies of alcohol based gel, per recommendations of the CDC, to help reduce the spread of disease and infections.

Next month, the World Health Organization (WHO) is publishing the 3rd Edition of its Guide to Hygiene and Sanitation in Aviation. This updated Guide has been written with the support and collaboration of a wide range of international aviation industry organizations and regulatory authorities, including AFA-CWA, the US Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA), the International Air Transport Association (IATA) and the Air Transport Association of America (ATA), the International Civil Aviation Organization (ICAO) among others. The Guide provides uniform guidelines for the development, management and maintenance of airline and airport hygiene and sanitation systems. **AFA-CWA recommends that US regulators require that all US airline and airport operators adopt the measures contained within this consensus Guide.** This will ensure that high standards of hygiene and sanitation are met industry-wide, and risks to the health of the public and airline crews are minimized, particularly during health emergencies such as the H1N1 outbreak.

These are some of the permanent steps that we believe should be taken immediately to help reduce the likelihood of illness and the spread of communicable diseases onboard the aircraft. In addition, there are actions that should be taken in the case of a declaration of a public health emergency. The FAA should outline these steps and actions and require these measures to be taken as soon as a public health emergency has been declared.

First among them is requiring that all aircraft be supplied with breathing masks that are determined appropriate protection by the CDC or WHO, at least on flights to, from, and within at-risk areas. As soon as a public health emergency has been declared, the FAA should direct air carriers to stock aircraft with these masks and have them on hand. They should also ensure that carriers do not discipline flight attendants for wearing the masks.

The FAA should also require that the airlines allow flight attendants with flu-like symptoms to call in sick with no negative consequences, including such absence or absences from duty being counted against the number of total illness allowed by the company in any given period. Currently, flight attendants are severely limited in the number of sick calls that they are allowed to make in a given year. As well, if too many sick calls are accumulated in a given year, the company may discipline a flight attendant or even terminate them. In the case of a public health emergency, flight attendants who are exhibiting symptoms of infection should not feel obligated to go to work because of draconian company dependability policies.

As well, the FAA should direct airlines to take steps to allow for pregnant or immune system compromised flight attendants the ability to change their scheduled trips if they involve flights to areas of the disease outbreak. As these individuals would be at the greatest risk in contraction of the illness or risking their pregnancy, we feel that it is important that steps be taken to reduce their risk of exposure, by allowing them to either drop those scheduled trips or making arrangements to work on trips that do not take them to these high risk areas.

OUTLOOK FOR SUMMER TRAVEL

AFA-CWA is grateful for the attention this subcommittee and the full committee have devoted to the performance, or lack thereof, of our nation's aviation industry particularly during high traffic months of operation. Your work in the 110th Congress and this 111th Congress has rightfully placed this issue front and center for all stakeholders.

I sit her today with decades of experience working in this industry. And as much as I would love to say that there is a magic wand to wave and make the summer travel season flawless, unfortunately we all know that's impossible. We know that load factors will increase and that none of us can control Mother Nature and the inevitable summer storms. These all mean that delays will happen. But steps can most definitely be taken to reduce those delays and minimize the impact.

Vacation travel, especially during the summer months, is intended to provide a gateway for millions of airline passengers to enjoy a well-earned getaway, but instead turns into extended taxi-way and runway delays, canceled flights and detoured vacation plans. For business passengers, summer aviation travel often results in canceled or delayed meetings and added expense during a time that every business trip must count.

Voluntary measures by airlines and attempts to enact so-called Passenger Bill of Rights legislation are simply band-aid approaches to a much larger systemic problem that is indeed a serious flaw in our nation's aviation industry.

The last eight years has been a wasteland of debate about the future of the aviation industry. Leadership was severely lacking from an administration far too focused on patchwork fixes to our aging air traffic control system and under funded levels of airport infrastructure investments.

Mr. Chairman, under your leadership and the leadership of the full committee, we have a FAA Reauthorization bill that firmly provides the path for achieving a 21st Century aviation system in this country that serves the needs of AFA-CWA members, communities, airlines and the millions of passengers who fly each and every day.

Passenger Bill of Rights legislation is meaningless and frankly unenforceable without first addressing our nations out dated air traffic control infrastructure. It is astounding to myself as well as the 55,000 AFA-CWA members that our air traffic control computer systems are so outdated that those systems only approximate where an aircraft is located, especially in congested air space.

The solution, which is often referred to as "Next Gen" needs to be re-branded as "Now Gen" as this work must be done as quickly and safely as possible. Without a clean sweep of retiring aged systems and swift installation of the latest air traffic technology, aircraft delays because of weather systems or other impediments will not be improved.
Any Passenger Bill of Rights, no matter how well intended, will not solve the complex air traffic control system problems.

This Committee has done its job for the American people by passing the FAA Reauthorization legislation and frankly that should be our focus. Summer travel experiences for flight crews and passengers will only be improved if we focus first on rebuilding our nations air traffic control infrastructure.

And, Mr. Chairman, we must address the urgent needs of the union men and women who staff our air traffic control system each and every day. Again, this committee has shown leadership in resolving that issue and I commend you for that leadership.

The temptation to enact or entertain Passenger Bill of Rights rules is understandable. Each summer, and during other events in the year, we hear the horror stories from passengers stranded onboard aircraft for endless hours and at times deprived of basic necessities. We get it Mr. Chairman, because we are there too.

But our sympathy for the enactment of a Passenger Bill of Rights is tempered by what we know will occur if such legislation is enacted. The nation's flight attendants will become trapped between federal mandates and management's inability or unwillingness to take the necessary steps to implement and enforce the Bill of Rights.

The nation's flight attendants will be put in a no win situation when Passenger Bill of Rights mandates are not followed. Management is not in the cabin having to explain violations, we are. Airport authorities are not onboard to explain why gate space or facilities are not available and extended taxiway waits are occurring. Flight attendants are left as the enforcers of federal mandates over which we have no control.

The best solution for flight attendants, passengers and the aviation industry is to pass the FAA Reauthorization legislation now and get to work fixing the real problems this beleaguered industry faces.

In the interim, AFA-CWA believes that the aviation industry can work to make summer travel more accommodating for flight attendants and passengers alike by addressing a critical issue that is often experienced during summer travel.

Cabin temperature standards are long overdue for this industry. In 2007, AFA-CWA conducted an extensive survey, using scientific systems to measure temperatures onboard certain flights operated in and out of cities with extreme heat and humidity temperatures and levels.

Using the National Oceanic and Atmospheric Administration's (NOAA) heat index table as a reasonable means for establishing temperature comfort levels in aircraft cabin, the AFA-CWA Air Safety Health and Security Department (ASHS) and flight attendants began measuring onboard temperatures with scientific devices. A shocking eighty-(80) percent of sampled flights were operating in the caution to danger zone areas for human health as described by NOAA standards.

The cure for this health issue is not complex Mr. Chairman. Adequate fixed or remote air conditioning systems require maintenance and replacement from time to time but are relatively inexpensive investments. Airline management and airport authorities must be directed to work together to ensure that each passenger bridge has a working air conditioning system that can supply cool air sufficiently to any size aircraft parked at a gate and that aircraft parked on the ramp, or not affixed to a passenger bridge, are provided cool air via air conditioning carts that are mobile and can be used on all aircraft types.

Airline pilots, at the urging of airline management, turn off aircraft engines to save fuel. However, it's the aircraft engines that provide the power to maintain and regulate the aircraft's interior temperature.

This solution seems reasonable, rational and affordable, yet each summer our members complain of aircraft cabin temperatures that exceed safe and comfortable levels.
This is a common sense fix that can be done immediately and will not only improve the experience for the traveling public, but the overall working conditions of flight attendants.

I again want to thank the Committee for giving AFA-CWA the opportunity to provide our perspective on these two important issues. As the front line employees in this industry with a day-to-day understanding of steps that can be taken to reduce the risks associated with a public health emergency and the feasibility of real steps to make the travelling experience better, we add a unique perspective to these issues. We look forward to continue working with this Committee to find ways to enact these improvements. Thank you for your time and I look forward to answering any of your questions.

FlyersRights.org

Prepared Testimony of
Kate Hanni[1]
Executive Director and Spokesperson
on

AVIATION CONSUMER ISSUES

Before the
Subcommittee on Aviation
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C.

May 20, 2009

Mr. Chairman and Ranking Member Petri:

On behalf of FlyersRights.org, I thank you for inviting me to appear at this hearing dealing with your Committee's continuing interest in aviation consumer issues.

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Strengthening Passenger Right Provisions
in H.R. 915
FAA Reauthorization Act of 2009

Mr. Chairman, on behalf of our members[2] and the flying public, we applaud the Airline Passengers' Rights provisions you have included in H.R. 915, FAA Reauthorization Act. The legislation requires airlines and airports to prepare contingency plans to provide for essential passenger needs when airline aircraft are kept on airport tarmacs for an extended period of time. These include providing food, water, working toilets, tolerable cabin temperature and access to medical care, and an option to deplane the aircraft after a certain amount of time IF the pilot determines that deplaning can be done safely.

We also recognize the improvements that you have made compared to last Congress' legislation that unfortunately was not acted upon by the Senate. For example, requiring that tickets and boarding passes include information so passengers can contact both DOT and airline consumer affairs staffs will make it easier for all parties to improve airline service.

We were also pleased that you added a provision that airports that are used by foreign carriers or domestic carriers operating international flights must have contingency plans in place for dealing with stranded aircraft. Too many times in the last year, U.S. citizens returning from vacations or foreign visitors have been stranded on airport tarmacs for several hours.

For example; our FlyersRights.org Hotline (1-877-FLYERS6) received a call from a passenger that was on board Flight 510 on April 10th, who reported they had sat on the tarmac at the Columbia, S.C., Airport for almost six hours with no food, no water, and the restrooms had stopped working. According to the caller, "My two-year-old hadn't eaten from the time we boarded the plane at 2:00 p.m. until nearly midnight. ...One woman went into shock and an ambulance had to be called."

The attached article from the Wall Street Journal provides more details about this recent multi-hour stranding, documenting how the airline's lack of internal coordination contributed substantially to the passengers' suffering. We hope that H.R. 915 implicitly or explicitly requires airlines to have contingency plans in place for international operations as well and that DOT Secretary LaHood instructs his staff to look into the recent multi-hour strandings on international flights to see if there are lessons that Federal agencies -- DOT, and the Department of Homeland Security's Customs and Border Protection (CPB) and Transportation Security Administration (TSA) can learn from these stressful passenger situations.

[2] FlyersRights.org is the new organizational name for the Coalition for an Airline Passengers Bill of Rights. Our section 501(c) (4) tax-exempt consumer group has grown to 25,000 air traveler advocates. After airline passengers bill of rights legislation is enacted -- hopefully this year, we will still have a continuing agenda of safety, health and regulatory issues of continuing importance to airline passengers.

No Real Progress Since Your Last Hearing on Aviation Consumer Rights

We (and others) were highly disappointed at the meager results in the DOT Task Force Report on tarmac delays[3] (see attached New York Times editorial) and at a DOT-proposed regulation[4] of passenger protections -- that won't protect passengers.

You will likely hear from the major scheduled airlines that "We're now doing a better job reducing or handling long tarmac delays." ...And with DOT's issuance of the industry Task Force Report and with DOT's working to finalize a draft regulation, there's no need for Federal passenger rights provisions to be included in your FAA Reauthorization Act legislation."

"Let us handle it," they say again, using the same arguments they advanced in convincing Congress in 1999 to stop working on passenger rights legislation and accepting instead voluntary Airline Customer Service Commitments.[5] However, the DOT's Inspector General testified here in 2001 and 2006 that airline efforts slacked off after the threat of legislation abated, and after the 9/11 terrorist tragedy.[6] ... And those Commitments or Customer Service Plans aren't even enforceable.[7]

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[3] DOT Task Force, "Development of Contingency Plans for Lengthy Airline On-Board Delays" (November 12, 2008).

[4] DOT Notice of Proposed Rule Making, "Enhancing Airline Passenger Protections" (December 8, 2008)

[5] DOT OIG Report Number AV-2001-020, "Final Report on Airline Customer Service Commitment" (February 12, 2001) at p. 1: "Congress, the Department of Transportation (DOT), and the Air Transport Association (ATA) agreed that the air carriers should have an opportunity to improve their customer service without legislation. To demonstrate the Airlines' ongoing dedication to improving air travel, ATA and its member Airlines executed the Airline Customer Service Commitment (the Commitment), on June 17, 1999. Each airline agreed to prepare a Customer Service Plan (Plan) implementing the 12 provisions of the commitment. The Airlines committed to:

- Offer the lowest fare available
- Notify customers of known delays, cancellations, and diversions
- On-time baggage delivery
- Support an increase in the baggage liability limit
- Allow reservations to be held or canceled
- Provide prompt ticket refunds
- Properly accommodate disabled and special needs passengers
- Meet customers' essential needs during long on-aircraft delays
- Handle "bumped" passengers with fairness and consistency
- Disclose travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration
- Ensure good customer service from code-share partners
- Be more responsive to customer complaints."

[6] DOT OIG Report AV-2007-012, "Follow-up Review: Performance of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment" (November 12, 2006), at p. 4: "The ATA airlines committed to notify customers and the airport and on board an affected aircraft in a timely manner of the best available information regarding delays, cancellations, and diversions. However, just as we found in our prior review, the information being provided about delays and cancellations in boarding areas was not timely or adequate during our tests." (Emphasis added)

[7] American Airlines, Customer Service Plan (website as of 2-1-09): "The Customer Service Plan does not create contractual or legal rights."

-- Task Force Exercise Was Disappointing to Passengers

We had asked the Task Force to establish minimum standards for passenger health and safety issues and for a maximum period for tarmac strandings. Instead, the airlines on the Task Force accepted no standards, with everything still being left to their unregulated discretion. ...And with no penalties for negligence.

During the Task Force meetings we also asked the FAA to allow ATC personnel to delay the "pushback" of airline flights from their gates if a long tarmac delay on the taxiway was inevitable. (We had reports from airline staff that airlines often move their planes away from their gates knowing that long tarmac delays are inevitable so they can load other scheduled planes from those same gates. Airport taxiways then often become aircraft parking lots.)

We cited a Joint Economic Committee Staff Report[8] that concluded that 20% of all flight delays occur during taxiing to the runway, involving excess fuel burn as well as time costs for airlines and passengers measured in the billions of dollars annually.

FAA, a Task Force member, was totally unhelpful, citing existing policy that the airlines alone determine when to push back their aircraft from gates onto the tarmac, no matter how long the taxiway backup will be. FAA only regulates aluminum tubes, we were told; we should contact the DOT Secretary's office which alone has consumer protection jurisdiction for the passengers stuck for hours in those tubes on the tarmac.

-- DOT's Proposed "Passenger Protections" Regulation Has No Standards

Similarly, in DOT's current draft of its weak, toothless "Enhancing Airline Passenger Protections" regulation, the airlines are asked to create their own contingency plans for long tarmac delays – with no DOT review for adequacy, no minimum standards, and no practical way for passengers to enforce whatever the carriers propose to offer.

The airline comments in the DOT rulemaking process make clear that they don't want any government body or individual passenger to be able to enforce any standards of airline behavior during long tarmac delays:

- **NOT THE STATES**: The airlines litigated the State of New York's recent attempt to establish minimum standards for air passenger health and welfare, imposing fines for violations. Ruling: only the Federal Government may regulate the airlines in this preempted area.

- **NOT FEDERAL DOT STAFF:** The airlines know that the Federal DOT staff won't enforce airline violations for individual passengers but merely collects passenger complaints and ships them off to the airlines "for appropriate action" without follow-up. However, the DOT Office of Consumer Affairs has been very responsive to a number of individual cases sent to them by FlyersRights.org.

[8] Joint Economic Committee Majority Staff, "Your Flight Has Been Delayed Again: Flight Delays Cost Passengers, Airlines and the U.S. Economy Billions" (May 2008)

- **NOT FEDERAL REGULATION**: The airlines are opposed to DOT's requiring them in its pending rulemaking to list their 1999 Commitments and their tarmac stranding policies in their Contracts of Carriage[9] for fear that some passengers will try to litigate those promises in state courts.

- **THUS, ONLY CONGRESS** can assure minimum protections for passengers.

Tarmac Strandings Continue Unabated

Our members were tremendously disappointed that the Passenger Bill of Rights provisions in your and the Senate's FAA Reauthorization Bills were not enacted during the last Congress. Airline and Federal agency (Customs and Border Protection (CBP), TSA) treatment of stranded airline passengers is not getting any better.

We've attached several articles and accounts of long tarmac strandings that we hope you will consider.

Mr. Chairman, while the statistics being reported by the BTS for 2008 show a decrease in tarmac strandings over 2007, we have reason to believe that these statistics are fundamentally flawed. Despite working with BTS over the past six months to resolve these issues, and in the face of overwhelming evidence to the contrary, BTS believes the data to be "accurate". However, we continue to believe that no reliance should be placed on that data one way or the other. Please find attached a related article by Susan Stellin from the May 19th edition of the New York Times.

Passengers Need Congress to Set a Uniform Deplanement Timeframe

However, we urge you to mandate that airlines offer individual airline passengers an option to deplane after three hours stranded on an airport tarmac PROVIDED the pilot determines that deplaning could be done safely (such as by a bus returning requesting passengers to the terminal).

This provision, included in H.R. 624 as introduced by Congressman Mike Thompson (with 29 cosponsors), is not currently included in H.R. 915. Unfortunately, the reported bill would allow each airline to establish its own guideline on the length of such strandings, so each airline conceivably could pick any timeframe it wishes, and those limits would be consistent with the reported H.R. 915. Worse, nothing would prevent an airline from setting one limit today and changing that limit tomorrow.

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[9] A Contract of Carriage is the document that air carriers use to specify any legal obligations to passengers, and technically is supposed to be enforceable in state courts. Each air carrier must provide a copy of its Contract of Carriage free of charge upon request. NOTE: FlyersRights.org believes that passenger lawsuits on Contract of Carriage provisions are both impractical and unsuccessful: (1) because the cost to a passenger of pursuing litigation is so high; and (2) because that Contract is filled with "wiggly lawyer words": "as appropriate," "if available," and "to the extent reasonable," so that judicial enforcement is unlikely.

The DOT's Inspector General also favors a set time limit. In previous testimony, he said, "We think it is unlikely that passengers' definition of an extended period of time will vary depending upon which airline they are flying. We are still of the view that a consistent policy across the airlines would be helpful to passengers."[10] Mr. Chairman, the public deserves a standard for stranding situations that it can understand.

Canadian Airlines Have Committed to a "90 Minute Deplanement Option"
Why Can't U.S. Carriers Accept a Similar Standard?

Recently, in Canada, the three largest airlines in that country have voluntarily set a time limit of 90 minutes after which passengers will be given the opportunity to deplane:

> **"If the delay exceeds 90 minutes and circumstances permit, Air Canada will offer passengers the option of disembarking from the aircraft until it is time to depart."**
> -- Canadian Tariff Filing -Effective June 8, 2009

Mr. Chairman, why can't U.S. consumers also enjoy a simple standard like this? Whether it's three hours as in H.R. 624, or ninety minutes as in Canada, passengers deserve a simple and clear standard for carrier responsiveness that they can remember

Last month, a blind, 62 year old, former interpreter for the European Union was dragged off a plane in handcuffs in Philadelphia for simply asking why they were sitting on the tarmac instead of being in the air or in the terminal. Passengers have a right to know they aren't going to be sitting on the tarmac for nine hours, and they need to know *before* they get on the airplane.

As you know, the airlines are out in force, lobbying the House of Representatives against <u>any</u> deplaning option, maintaining that "no one size fits all circumstances," the stranding problem is "too small to justify a legislative solution," and "any deplaning option results in flights that are returned to the terminal and cancelled." They blame the air traffic control system and weather as the root of all this evil.

[10] DOT OIG's <u>Status Report on Actions Underway To Address Flight Delays and Improve Airline Customer Service</u> (April 9, 2008, at p. 23 of Attachment).

Tarmac Delays Often Occur as an Airline's Choice

Well, Mr. Chairman, everyone likes to blame the weather, and we agree that the air traffic control system needs updating. But FlyersRights.org and passengers disagree strongly that these are the only causes for strandings and delays.

- We are simply asking Congress to set a time ceiling[11] on strandings where deplanement is a safe and sensible solution. Airlines can set a lower ceiling if they chose. In fact, 81% of some 4000 respondents to a recent National Public Radio survey of passenger views on elements for an "Airline Passengers Bill of Rights favored a two-hour limit on strandings. (This was the most highly ranked option of all respondents.) A copy of the full NPR survey results is attached.

- Weather doesn't back a plane away from a gate and sit for hours on the tarmac. That's an airline operational decision. As a former Delta CEO put it in a letter to Senator Barbara Boxer in a letter in 2007, "It's just operationally expedient."

- Patrick Forrey, President of the National Air Traffic Controllers Association, said earlier this month at a Senate hearing on this topic, "I get upset when [the Air Transport Association's] Mr. May states that the problem with delays in New York are because of the Air Traffic Control System ...You can't land 50 airplanes when the runways will only handle 40, and you can't depart 60 airplanes when the runways will only handle 45 in an hour and that's what the airlines continue to do, it doesn't matter if it's sunny or a tornado is moving through, it's a matter of physics."

- At the same hearing, Captain John Prater, President of the Air Line Pilots Association International said, "When you block up intentionally an airport to prevent other people from coming in, when you intentionally put smaller planes in the system to create more frequency because that's what everybody wants, you are going to clog up the airspace. They could use larger airplanes and serve more people without quite as many delays. Airlines are trying to protect their hub fortress mentality to prevent competition."

So enough with the excuses from the airlines. Airline passengers need action, not excuses.

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[11] Again, there would be no deplaning option unless the pilot determined it was safe to do so. H.R. 624 would even allow an extra 30 minutes if the pilot believed the flight would depart soon. Individual passengers would have the option to deplane, and other passengers could stay on the aircraft. We anticipate that airports will buy buses (eligible with Federal airport grants) so that planes won't have to move out of line on the taxiway for deplaning some passengers. DOT data (still under-reported by airlines) document that more U.S. passengers are stranded for 3 or more hours annually than the number of passengers who benefit from the current DOT regulation against airlines' overselling flights and setting payments for involuntary bumping. So the problem is substantial. In sum, uncontrolled long strandings are important enough to justify Congress' establishing minimum Federal standards.

RECOMMENDATIONS

In summary, Mr. Chairman, here's what Flyers Rights.org would like you to obtain for passengers in an enacted FAA Reauthorization Act this year:

1. The Passengers Bill of Rights provisions in H.R. 915, improved with a maximum strandings time limit standard. That standard won't always be able to be met (e.g., it's always the pilot's call whether deplanement can occur safely) but airlines must be required to offer maximum passenger relief in that specified timeframe.

2. Whether that's a 90 minutes (Canada) or 3 hours (Rep. Thompson's H.R. 624) standard, passengers need to have Congress provide them with a simple, straight forward answer as to when their "right to ask for deplanement" occurs. Congress won't be helping passengers if you only offer: "It all depends; each airline decides and they each have different views." As noted, the DOT Inspector General favors a single strandings time limit.

3. H.R. 915 should implicitly or explicitly require airlines to have contingency plans in place for international operations landing at domestic airports. Airport contingency plans alone are not enough.

Here are the actions that DOT Secretary LaHood could take now – without any new statutory authority or new regulations -- to get some benefit for passengers as a result of the publication last November of the Task Force Report on tarmac delays:

1. Ask now for a written report from each of the major U.S. airlines and major U.S. airports (not their trade associations) as to whether they've developed contingency plans based on the recommendations in the Task Force Report. Our sense – and noting the obvious absence of contingency planning at the airports where recent multi-hour standings have occurred – is that nothing is happening out there. The Task Force Report is just sitting on shelves in airline corporate offices and in Airport Directors' offices.

2. Direct his staff to review the recent strandings of international flights at U.S. airports to assure that other Federal agencies -- Customs and Border Protection (CPB) and the Transportation Security Administration -- are working out arrangements for humane passenger handling at diverted airports as they promised in the Task Force Report. Airlines and airports can't solve those problems on their own and DOT is in the best position to get more implementation from these other Federal agencies.

Again, thank you for the opportunity to testify. I'd be pleased to answer your questions.

Kate Hanni
Founder and Spokesperson
FlyersRights.org

Attachments

May 19, 2009

Passengers' Advocates See Progress

By SUSAN STELLIN

After a nearly a decade of failed efforts to win rights for airline passengers, advocates may finally score some modest gains.

Congress is considering three initiatives: requiring the airlines to provide passengers stuck on grounded aircraft with food, water, functioning restrooms and medical treatment (and possibly the option to get off the plane after three hours); establishing a consumer complaints hot line and publishing the phone number on boarding passes; and requiring airlines to disclose a flight's on-time record at the point of purchase.

Since the proposals are either part of the Federal Aviation Administration appropriation bills moving through Congress or are expected to be offered as amendments to that legislation, they have a better shot at success this time around, proponents say. A vote in the House is expected sometime this week.

The thorniest issue is whether Congress will impose a time limit on keeping passengers on planes stuck on the tarmac.

The carriers strongly oppose that prospect, arguing that the logistics involved would make it difficult to give people the option of getting off. Yet four Canadian airlines recently agreed to let passengers disembark if a ground delay exceeds 90 minutes — if it is safe and practical to do so.

"This is subject to the aircraft commander's discretion," said George Petsikas, president of the National Airlines Council of Canada. "But clearly, we understand that when things get long on board we have to look after our passengers' well-being and comfort."

Mr. Petsikas acknowledged that the airlines agreed to the new rules, which begin on June 9, partly as a response to a more aggressive proposal before Parliament that would require carriers to pay passengers compensation for delays.

While such financial penalties are not under consideration in Congress, the idea is supported by the National Business Travel Association.

"We think the F.A.A. should take a look at whether refunds could be appropriate for a multitude of reasons, including delays," said Stewart Verdery, the group's government relations consultant.

Mr. Verdery said the travel association deferred to the discretion of the airlines on how to handle long onboard delays, as did the Airports Council International-North America.

"From the airport's perspective, we support the airlines making that decision," said Deborah McElroy, an executive vice president with airports council. But she said that airports typically did have the resources to help get passengers off aircraft, even when a gate was not available, using buses or stairs or an alternate location like a hangar.

"If the decision is made to deplane passengers, we have plans in place to make that happen," Ms. McElroy said.

One issue that has clouded the debate over how to handle extended tarmac delays is determining how often these situations occur.

For years, the Department of Transportation primarily tracked flights that experienced long taxi-out times from the gate to the runway. Using this criteria, about 7,150 flights spent two hours or more on the tarmac before taking off in 2008, and 1,231 spent three hours or more awaiting take-off.

Beginning last October, the Transportation Department also started tracking data about additional flights that spent a long time on the ground: flights that were diverted to an alternate airport, planes that left the gate and returned multiple times, flights that were delayed after landing or flights that were delayed and then canceled. (International flights and flights on many smaller regional carriers are still not counted.)

The new parameters have added about 25 flights a month to total delays of three hours or more, but a group of passenger rights advocates questions whether the Transportation Department is getting accurate data from the airlines.

According to Kate Hanni, executive director of FlyersRights.org, which has been pushing for better accounting, a dozen airlines filed data with the department suggesting that they always gave passengers the option of getting off a plane when a flight was diverted to an unscheduled airport — a virtual impossibility since records showed many of those flights spent less than half an hour on the ground.

"All this information comes from the airlines, and unless someone proves that it's wrong, the D.O.T. reports what they get from the airlines," Ms. Hanni said. "It calls all of the data into question."

Dave Smallen, a spokesman for department's Bureau of Transportation Statistics, said the agency was planning to meet with Ms. Hanni and Mark Mogel, a FlyersRights volunteer and software engineer who has been analyzing the data, to discuss the issues they raised.

David Castelveter, a spokesman for the Air Transport Association, said the airline trade group believed the data "accurately captures the extent and cause of delays," and continued to oppose rules about deplaning passengers.

"For safety reasons, you can't commit with absolute authority that you can get somebody off an airplane," Mr. Castelveter said.

But he said some airlines were already complying with another proposal being considered, which would require carriers to disclose a flight's on-time record at the point of purchase. On United's Web site, for instance, customers shopping for a ticket can view "flight info" to see a flight's on-time record.

While that requirement is not currently part of the F.A.A. reauthorization bills, Senator John Thune, Republican of South Dakota, introduced a similar measure in 2007 (the Informed Air Traveler Act) and a spokesman said he planned to offer the language as an amendment to the F.A.A. bill.

A provision to establish a consumer complaint hot line, and publish it on boarding passes, is also being considered. While the Transportation Department's Aviation Consumer Protection Division has a number passengers can call to report problems like mishandled luggage, it is not widely publicized.

"It would be a monumental step forward to get any of this legislation passed," Ms. Hanni said.

Even so, these measures do not address many of the frustrations customers experience while flying, or the underlying problem of systemic delays.

"I'm a capitalist," said William McCurry, a consultant based in Princeton, N.J., explaining that he generally supports free-market principles, but joined FlyersRights because of his frustrations with air travel — and the inability to rely on the system to meet clients.

"This organization should not need to exist," Mr. McCurry said. "That's why we have Congress and the F.A.A. But nobody is looking out for passengers."

THE WALL STREET JOURNAL.
- WSJ.com

- THE MIDDLE SEAT
- APRIL 28, 2009

From Paradise to Perdition on the Tarmac

- **By SCOTT MCCARTNEY**

After several high-profile fiascoes two years ago, airlines promised to do more to avoid stranding passengers on planes for hours. But Delta Flight 510 is a stunning reminder that the problem persists.

On Good Friday, April 10, what should have been a three-hour flight became a 13-hour ordeal for passengers heading home from a Caribbean vacation. When thunderstorms prevented Delta Air Lines Inc. Flight 510's scheduled landing in Atlanta, the MD88 diverted to Columbia, S.C., for nine hours. Passengers spent five of those hours on the tarmac without food or water.

Airport officials say bathrooms turned foul, children got antsy and some passengers became extremely agitated. One woman called 911 because she needed food. Parents with small children ran short on essentials like diapers. Eventually the passengers were allowed off and held in part of the terminal, cordoned off with yellow police tape.

"They were kept on the plane for an unduly long period of time," said Chuck Henderson, deputy director of the Columbia Metropolitan Airport, who came back to the airport that night to tend to fliers. "They were hot, tired, sunburned and maybe some were hung over from their vacation. They were p- off."

Adds Lee Sessions, Delta's station manager in Columbia: "It was an ugly event."

Flight 510 could well restart an effort in Congress to impose a "passengers' Bill of Rights" that would limit how long airlines can hold passengers on planes sitting on the tarmac and require carriers to provide food and essential services during long delays.

Knowing when to give up the wait for takeoff and go to a terminal is a tough problem for airlines -- and a major inconvenience for travelers. Sometimes the best option is to wait out storms and congestion, because the plane you're sitting on may be your only chance to reach your destination that day.

As the busy summer travel season approaches, Flight 510 is a reminder that severe weather can quickly turn routine flights into strenuous ordeals, and fliers should be prepared. In the first two months of this year, 105 flights waited three hours or more to take off after leaving the gate, according to the Bureau of Transportation Statistics. More flights gave up and canceled after long waits. Still more ended up diverted from their original destinations and either sat for long

periods, like Flight 510, or waited until the next day to depart, leaving passengers scrambling for airport cots or hotel rooms.

When Plans Change

According to BTS, about one out of every 400 domestic flights gets diverted, and when it does happen, planes sit for about two hours on average. The BTS, which began tracking delays on diverted flights last year and has reported five months of data through February, says 26.8% of diverted domestic flights end up being canceled.

In most cases, bad weather triggers problems, but the inability of the U.S. air-travel system -- airlines and the Federal Aviation Administration -- to cope compounds passenger woes. Some flights get low priority or are seemingly forgotten even as other planes fly on. Rigid limits on crew duty time can leave passengers stranded. Airports that find themselves overwhelmed with lots of jets to refuel and service can compound delays.

All of those factors worked against Flight 510. The MD88 left Providenciales International Airport on Turks and Caicos Islands at about 2 p.m. with 134 passengers and approached the Atlanta area around 5 p.m., just as thunderstorms moved in and slowed landings. Because of a heavy load of luggage, the plane had only enough fuel to circle for 16 minutes, Delta said.

More than 40 Delta flights, including 510, diverted to other airports, but others cruised in on time, according to data from FlightStats.com, showing just how hit-or-miss air-traffic control can be under stress. At the same time Flight 510 wanted to land, Delta 422 from San Juan, P.R., landed one minute early at 5:04 p.m. Delta Flight 536 from Cancun landed in Atlanta at 5:12 p.m., 17 minutes early.

On the ground in Columbia at 5:44 p.m., Flight 510's passengers were kept in the hot cabin for five hours without food while Delta's crew hoped to get clearance for the flight back to Atlanta. The jet was refueled and ready to go at 6:20 p.m., according to Gary Edwards, Delta's director of flight control, and given a takeoff time of 7:01 p.m. But a second wave of thunderstorms hit Atlanta, canceling that plan. A new takeoff time of 7:55 was issued, but the crew ran out of time under federal duty limits at 7:45 p.m.

Midnight Pizzas

As the hours passed, "conditions got bad" on the plane, Mr. Edwards said. "Unfortunately with the complexity of flying, days like this happen."

One passenger called 911 to report an emergency, claiming she was going into diabetic shock. When paramedics arrived, the woman said she was just hungry, airport officials said.

Delta says bathrooms were serviced after 2½ hours on the ground in Columbia -- six hours after the plane left Providenciales. Delta did not order pizzas and sodas for passengers until 11:30

p.m., nearly six hours after landing in Columbia. They were delivered at 12:40 a.m., according to Delta's Mr. Sessions.

It took more than two hours for federal, airport and airline officials to come up with a plan to get passengers off the plane. Because the flight was an international trip, people aboard needed to clear U.S. Customs and Immigration before they could be allowed freely into the terminal.

Passengers were eventually herded into a barren room underneath the airport terminal. Delta's flight crew left and went to the airline's on-site operations office, angering some passengers, who felt abandoned, Mr. Henderson said.

"The crew really sort of vaporized, and that exacerbated the situation," he said. "It would have really helped a lot had the skipper served as the passengers' advocate. Some folks got very unhappy because they felt like Delta wasn't being much help."

Mr. Sessions says he was down in the basement room with passengers, and that's when he learned food needed to be ordered. Delta says its policy is that passengers are the crew's responsibility. "At that point everyone is trying to do the right thing but things could have slipped through the cracks," said spokesman Ed Stewart.

The basement room quickly proved unworkable, and passengers were taken upstairs into the terminal concourse and held in an area cordoned off with yellow crime-scene tape. There they had bathrooms, a restaurant that remained open, seating and outlets for laptops and cellphones, Mr. Henderson said. He personally escorted some passengers down to the plane's baggage compartment to retrieve essentials.

"Most passengers were wonderful. Some were -- particularly moms with children -- upset. And some felt like they were being detained," Mr. Henderson said.

Even More Delays

Delta tried to redirect an MD88 crew to Flight 510 from one of the other flights diverted to Columbia, Mr. Edwards said, but by the time word reached the other crew, they already had clearance to fly to Atlanta. So another crew had to be flown in. Those pilots and flight attendants were put on an Atlantic Southeast Airlines flight from Atlanta to Columbia, which didn't arrive until nearly 1 a.m., more than three hours late.

In Columbia, about 30 people opted to clear Customs and stay there because they happened to live in South Carolina or just didn't want to fly to Atlanta in the middle of the night. With the remaining passengers and new pilots, Flight 510 took off from Columbia at 2:45 a.m. and landed at 3:28 a.m.

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April 21, 2009

Welcome To The 'Troubled Skies'

Creating A Passengers' Bill Of Rights

WaveBreaker/ via flickr

A study released this month found nearly one-quarter of all flights were late in 2008.

NPR.org, April 10, 2009 · First we asked you for suggestions on what should be on a Passenger's Bill of Rights. We got hundreds of suggestions in the comments section and on Twitter. Then we took the best ones and put them up for a vote. Almost 4,000 votes later, the top ten are filled with demands for courtesy and, surprisingly perhaps, information. Below are the results.

1. **81%** Plane should return to gate if it doesn't take off within two hours.
2. **75%** Right to updated information on delays.
3. **69%** The right to be treated fairly with respect and courtesy.
4. **67%** Right to unlimited free water.
5. **60%** Bumped passengers should get a cash refund on the spot plus rebooking on the next flight.
6. 59% Right to select any alternative flight in case of delays or cancellations.
7. **57%** Right to updates from the pilot every 30 minutes while waiting.
8. **56%** The right to peacefully question TSA officials' actions and motives.
9. **53%** The right to one change to a ticket without charges.
10. **51%** No extra charges for baggage.

Recent First

Brian Schwarz (bschwarz77) wrote:
I kind of wish we had more rail in America. All this with airplanes is getting old.
Monday, April 20, 2009 7:09:13 PM
Recommend (0) Report abuse

Dale Hupp (NKA) wrote:
This bill of rights is greatly needed since airlines won't improve customer service on their own. The publicized industry metrics several days ago do not depict true service levels. On-time arrivals are measured when touchdown occurs, not when the passenger actually gets to the gate. At Wash. Reagan National, U S Airways operates several commuter flights out of one gate. To reach that gate you must travel via shuttle bus which can take up to twenty minutes to arrive plane side. The other meaningless metric is lost bags. You may get your bag but the wait inside the terminal is again twenty minute plus, and now many airlines charge you per bag for this inconvience.
Sunday, April 19, 2009 3:29:19 PM
Recommend (0) Report abuse

Colleen Gavin (thegav) wrote:

THE NEW YORK TIMES **EDITORIALS/LETTERS** FRIDAY, NOVEMBER 21, 2008

The New York Times

ARTHUR OCHS SULZBERGER JR., *Publisher*

The Tarmac's Madding Crowds

A federal study group — created with fanfare to tackle the wretched ordeal of passengers stranded for hours on idled jetliners — has refused to mandate how long airlines can keep their passengers trapped before taxiing back for relief.

The experts' answer: Suck it up and sit there on America's unfriendly tarmacs for as long as it takes.

The task seemed a no-brainer a year ago when advocates for harried nonfliers estimated three hours would be a reasonable limit before heading back to the gate and civilization. But the so-called tarmac task force set up by the Department of Transportation was stacked with airline and airport executives who treated the definition of a lengthy delay as if it were some conundrum of astrophysics.

Instead, the 36-member task force feebly recommends that airlines try to update passengers every 15 minutes, even if there's nothing new to report and, of course, no end now mandated for their predicament.

As for the grisly tales of parched and frenzied passengers stranded without food or drink, the task force recommends that airlines offer refreshments and entertainment "when practical." Oh yes, and make reasonable efforts to keep restrooms more usable than fetid as stalled planes sit there clueless and unairconditioned.

The department's inspector general had recommended setting a limit for how long passengers can be forced to be sealed off in planes. But the task force's conclusion was that this is a complicated question best left to the different airlines and airports. Or, as one industry member arrogantly maintained: "One size doesn't fit all." Enough already.

Surely the incoming administration will be less captive to industry on this issue — and every other. It certainly doesn't take an expert to realize that it is the passengers who pay to keep the airlines airborne. It's only humane that they be accorded something short of full captivity on the ground.

June 4, 2009

Hon. Jerry Costello
Chairman
Subcommittee on Aviation
Committee on Transportation and Infrastructure
U.S. House of Representatives
2251 Rayburn House Office Building
Washington, D.C. 20015

Re: Modification of FlyersRights.org Prepared Testimony
For Subcommittee's May 20th Hearing on Aviation Consumer Issues

Dear Mr. Chairman:

After my prepared testimony was submitted to the Subcommittee, I became aware that a paragraph on page 4 of that text, headed "**NOT FEDERAL DOT STAFF**," was inaccurate and incomplete.

That text did not accurately reflect the wider range of services that are provided by the DOT's Office of Aviation Consumer Protection Division -- both for individual air travelers who contact that office and in response to possible violations of specific DOT regulations (over sales, baggage, civil rights, code-share, on-time performance disclosure and advertising).

In point of fact, personnel in that office have been very responsive when FlyersRights.org has brought individual cases to their attention. In addition, DOT has brought formal enforcement action against an airline for a high-visibility single egregious violation of existing DOT requirements in addition to enforcing against carrier patterns of behavior that violate regulatory standards.

We cannot retroactively amend our prepared statement. However, we will include an accurate statement of the functions performed by that office in our prepared testimony when we next appear before the Subcommittee on aviation consumer issues. In the interim, I would appreciate your including this letter of correction immediately following my prepared statement in your Subcommittee's hearing record for its May 22 hearing on aviation consumer issues.

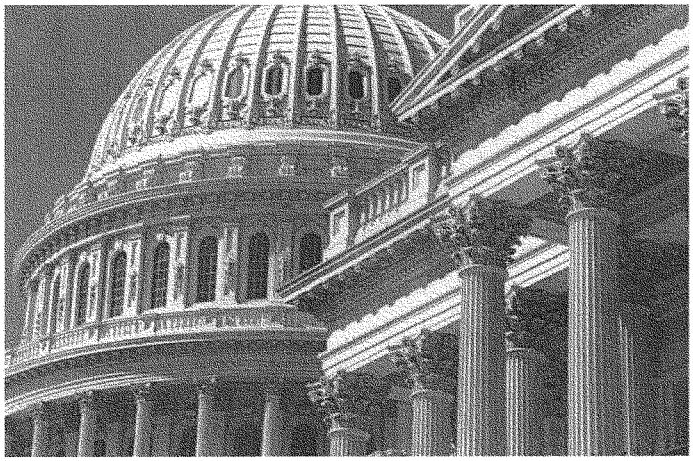
Thank you for your assistance in this matter.

Sincerely,

Kathleen Hanni
Executive Director
FlyersRights.org

ATA TESTIMONY

Aviation Consumer Issues: Emergency Contingency Planning and Outlook for Summer Travel



Statement of John M. Meenan
Executive Vice President and COO
Air Transport Association of America, Inc. (ATA)
before the
Subcommittee on Aviation
of the
House Committee on Transportation and Infrastructure
May 20, 2009

AIR TRANSPORT ASSOCIATION

OVERVIEW

The airline industry is committed to good customer service – and it proves that commitment millions of times each day. That commitment is what allows several million passengers to travel daily around the country and around the world – safely, efficiently and economically. It is why airfares today are almost one half of what they were in 1978 (in inflation adjusted dollars) while travel options have expanded exponentially. Frankly too, good customer service is in our own best interest – it assures returning customers and we know that customer satisfaction is a clear sign that the business is operating smoothly and efficiently. Simply, those are the results that we want to see.

Good customer service in the airline industry means an overall quality passenger travel experience – most notably on-time performance. But the travel experience depends on a multitude of moving parts – many of which are not controlled by an airline – meshing together. Is the air traffic control (ATC) system functioning efficiently and moving ***all*** air traffic, or has the Federal Aviation Administration (FAA) instituted measures to slow traffic or completely close some routes? Are some airplanes on the ground unable to get clearance to enter the airspace? Is the airport operating efficiently? Has a ground delay program been instituted? Is the airport baggage system functioning properly? Has airfield construction reduced the airport's capacity? Has weather disrupted operations at a key hub airport? All of these *non*airline factors have an impact on airline on-time performance, delays, diversions, baggage handling and other service features that are measured to rate an airline's customer service performance.

Notwithstanding all of these uncontrolled (and often uncontrollable) variables, and many others as well, airline customer service is remarkably good and improving. We know this because the hard data give us the facts. The trend is clear, compelling and cannot be disputed. This should not be surprising to anyone. Delays are disruptive and costly for airlines and, aside from their push for ever improving service, it is in their own self-interest to avoid them if possible. The ATA member airlines have worked hard to address past deficiencies and they will continue to work hard to improve those factors within their control.

The single biggest factor that can improve the passenger experience and customer service, however, is not in the airlines' control. That factor is modernizing the ATC system through the FAA Next Generation Air Transportation System (NextGen) and, in particular, accelerating implementation of certain NextGen components. Accelerating aspects of NextGen to create a *NowGen* program will accelerate much needed capacity and efficiency improvements, thereby reducing congestion and delays and improving customer service.

CUSTOMER SERVICE - IMPROVEMENTS ARE CONTINUING WITHOUT LEGISLATION

We have consistently said that customer service legislation is not needed for several reasons, including marketplace competition for customers, the airlines' own self-interest in earning repeat business, public attention to this issue and regulatory oversight and enforcement by the Department of Transportation (DOT).[1] Customer service has been improving over time. Airlines learned a great deal from the unusual and extreme events of December 2006 and February 2007 about how to better handle lengthy delay situations and improve the decision process to cancel flights. We remain firm in our conviction that legislation is not needed – and, in fact, it would likely cause a net decline in customer satisfaction.

[1] *See:* Statement of James C. May, President and CEO of the Air Transport Association of America, Inc., before the Subcommittee on Aviation, House Committee on Transportation and Infrastructure, April 20, 2007.

The most recent DOT data show that customer service has improved consistently...

DOT Airline Customer Service Metrics

	2000	2007	2008	1Q09
Flight Cancellations (as % of sched. domestic departures)	3.30	2.16	1.96	1.91
Taxi-Out* Times > Three Hours (per 10,000 domestic departures)	2.92	2.22	1.76	1.08 (1.38**)
On-Time Arrival Rate (% of domestic flights within 00:15)	72.6	73.4	76.0	79.2
Involuntary Denied Boardings (per 10,000 domestic passengers)	1.04	1.12	1.10	1.31
Mishandled Bags (per 1,000 domestic passengers)	5.29	7.05	5.26	4.29
Customer Complaints (per 100,000 domestic passengers)	2.98	1.38	1.13	1.03

* Time elapsed between departure from the origin airport gate and wheels off

** Effective October 2008, BTS monthly reports on tarmac times included, for the first time, data from flights which were subsequently cancelled, diverted, and/or had multiple gate departures (see [illegible])

Sources: Bureau of Transportation Statistics and DOT *Air Travel Consumer Report*

34 www.airlines.org

...and that extended delays are down.

Taxi-Out Delays (per 10,000 departures)			
	2 hrs and/or more	3 hrs and/or more	4 hrs and/or more
2007	12.29	2.22	0.38
2008	10.20	1.76	0.40
1Q09	7.02	1.08 (1.38*)	0.19

* Effective October 2008, BTS monthly reports on tarmac times included, for the first time, data from flights which were subsequently cancelled, diverted, and/or had multiple gate departures (see http://www.bts.gov/help/about_tarmac.html)

In addition, the most recent DOT Consumer Report[2] shows that lengthy tarmac delays remain extremely rare:

- A total of 21 out of 557,442 scheduled flights in March 2009 (0.0038 percent) had tarmac delays of four hours or more; 88 had delays of three hours or more (0.0158 percent)
- Of the 21 flights delayed four hours or more, 18 occurred on March 1 due to a severe weather event, and the remaining three occurred on one other bad weather day, March 29.

[2] Issued May 2009.

ATA member airlines have been very active in addressing the issues associated with lengthy tarmac delays. For example, the congressional hearings in April 2007 revealed gaps in the delay data collected by Bureau of Transportation Statistics (BTS), particularly with respect to cancelled and diverted flights. ATA and its members supported changes to the reporting system to capture this data and worked with DOT and BTS to update the reporting system. Carriers began reporting this new data in October 2008.

ATA and its members also participated in the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays (Task Force) established by former DOT Secretary Peters in early 2008. The Task Force addressed contingency planning for both airports and airlines, and produced an extensive document capturing numerous issues that contingency plans should address, and best practices to deal with them. It was a highly successful exercise that enabled airlines and airports to review and update their internal contingency plans on an ongoing basis as the Task Force worked on these issues.

In November 2007, DOT initiated a rulemaking process to expand its consumer protection regulations for airline passengers. ATA and its members have actively participated in this rulemaking and, in fact, have supported several DOT proposals. While we disagree with certain proposals having to do with incorporating contingency plans and related items into airline contracts of carriage, when finalized, the rule will enable consumers to obtain more relevant information and provide additional protections to passengers when, despite the best efforts of the airlines, things go wrong.

Beyond the regulatory front, innovation and competition continue to drive airlines to improve the passenger experience. Online and kiosk applications to obtain boarding passes are no longer novel – they are considered *de rigueur*. Airlines are now experimenting with electronic boarding passes so that cell phones and personal digital assistants (PDAs) can be used, thereby eliminating paper boarding passes entirely. And *a la carte* pricing by some airlines for services not every passenger needs or wants is helping to offset upward pressure on base fares. These innovations (as well as varying approaches tried by different airlines) have become a point of competition, which is exactly what Congress looked for – innovation and competition – when it passed the *Airline Deregulation Act*.

The cost of delays cannot be ignored. As a nation, the Joint Economics' Council indicates we are sustaining some $41 billion in unnecessary delay costs annually. That includes $12 billion in lost time to passengers, $10 billion in indirect costs to the country and $19 billion in increasing airlines operating expenses. In the twelve-month period ending September 2008, 138 million system delay minutes drove an estimated $10 billion in direct operating costs for scheduled U.S. passenger airlines. Delayed aircraft also drive the need for extra gates and ground personnel. The Joint Economic Committee found that the total cost to the economy of domestic delays in 2007 was nearly $41 billion, including $19 billion for airlines and $12 billion for passengers.[3] Delayed aircraft also drive the need for extra gates and ground personnel.

For all of these reasons, we do not think consumer protection legislation is needed. In particular, we oppose a hard and fast rule requiring airlines to give passengers the option to deplane after three hours. Mandatory deplaning will have numerous unintended consequences that, ultimately, will create even more inconvenience for passengers and lead to even more flight cancellations. Forcing airplanes to return to the gate or get out of line to deplane a passenger to a ground vehicle on an active taxiway will be highly disruptive to airport and airline operations and raises significant safety issues.

[3] *Your Flight Has Been Delayed Again*, Joint Economic Committee (May 2008)

As we noted in prior testimony,[4] if a flight returns to a gate and is cancelled, then the passengers will very likely be delayed into the next day. Even if a flight is not cancelled, planes will lose their place in line to depart by being forced to go back to the terminal or pull out of line to deplane passengers by air stairs. This will cause even longer delays for everyone else. Consequences that will occur, particularly from returning to the gate to deplane a passenger, include:

- Cancellations because crews "time out"[5]
- Flights delayed because planes lose their place in the departure line
- Unplanned overnight stays for unaccompanied minors
- Mishandled baggage
- Missed meetings and vacations
- Cascading cancellations and delays caused by planes and crews out of position, especially when diversions are involved
- An overall increase in cancellations because airlines will pre-cancel flights to limit passenger inconvenience and operational complications caused by the bill's requirements

The impact of flight cancellations extends beyond the passengers on the cancelled flight. Operationally, the consequences for airlines and the next day's passengers include:

- Crews and aircraft are 'out of position' and the next day's schedule is compromised
- Passengers at the destination city must wait for the aircraft to arrive the following day, delaying or cancelling *their* departures
- Flight crews 'deadheading' on the cancelled flight will not reach their destinations and will not be available to operate their scheduled flights
- Aircraft will be forced to traverse congested runways/taxiways when logistically possible to return to the terminal

Based on the governments' own objective metrics, customer service is improving and airlines are doing a better job of responding to lengthy tarmac delays. Competition, regulatory oversight and enforcement, and heightened awareness and focus are working. On the other hand, proposed legislation will be disruptive and add unnecessary costs. We continue to believe that additional legislation is not necessary.

MODERNIZATION IS NEEDED NOW: *FROM NEXTGEN TO NOWGEN*

All sectors of the broader aviation industry – airports, airlines, business aviation, manufacturers, passengers and shippers – agree that the FAA ATC system is badly in need of modernization and that the FAA Next Generation Air Transportation System (NextGen) is needed now. The current ATC system has reached the limits of its capabilities, is expensive to maintain and is labor intensive to operate. In several areas of the country, most notably in the Northeast, the system is unable to provide the capacity needed to meet the demand for ATC services at peak periods and at times of severe weather conditions. With FAA forecasting significant long-term growth, it is critical that modernization initiatives be implemented as soon as possible. The current recession may delay that growth, but it will be only a short respite that we

[4] *See* Footnote 1.

[5] FAA regulations on duty limits and rest requirements for pilots and flight attendants, as well as carrier collective bargaining agreements that go beyond the regulations, limit the amount of time pilots and flight attendants may be on duty without a rest break. Limited provisions that allow the duty day to be extended because of reasons beyond the control of the airline assist in dealing with weather-related delays. However, the utility of these provisions will be curtailed significantly by forcing planes back to the gate to deplane passengers.

cannot afford to waste. Indeed, now is the right time to accelerate several key NextGen components to drive "NowGen," which will deliver many of NextGen's benefits much sooner.

NextGen

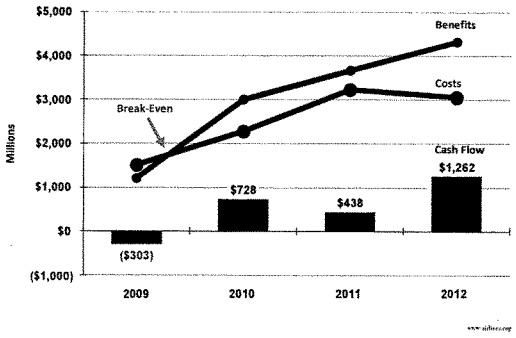
NextGen, which will employ a number of new technologies in a satellite-based air traffic management system, coupled with new operating policies and procedures that take advantage of these technologies, will provide tremendous improvements over the current system and will benefit all system users passengers and shippers, the public in general and the U.S. economy. Public benefits include improved operational efficiency, reduced fuel consumption and emissions and lower operating costs for airlines.

One of the key benefits will be **operational integrity and customer satisfaction.** Closely linked to capacity, efficiency and productivity is operational integrity. By expanding capacity and enabling more efficient operations, NextGen will enable better on-time performance (operational integrity) and improved customer satisfaction. Today's outdated ATC system contributes to delays and disruptions that could be avoided and will be avoided when NextGen is implemented. With improved operational integrity comes fewer delays, fewer missed connections, fewer misplaced checked bags and more satisfied customers.

NowGen

By accelerating several key NextGen components and investing in proven technologies, much of NextGen can be transformed into *NowGen* to deliver immediate benefits. *NowGen* accelerates the manufacture and installation of required avionics, the installation of associated ground infrastructure and the development and implementation of new procedures. Instead of achieving roughly 12 percent fleet readiness by 2012 under the existing FAA NextGen schedule, *NowGen* delivers 100 percent fleet readiness in 2012. As a result, *NowGen* delivers tremendous public benefits immediately and total benefits will exceed costs as early as 2010.

***NowGen* Benefits Exceed Costs As Early As 2010**



NowGen will work because it focuses on accelerating five key proven technologies and implementing related procedures. These are:

- **Automatic Dependent Surveillance-Broadcast (ADS-B).** ADS-B requires new equipment, ground infrastructure, airspace revisions and pilot procedures using a GPS source. The cost and complexity of equipment installation varies significantly depending on current aircraft configuration. ADS-B enables an aircraft to constantly broadcast its current position simultaneously to air traffic controllers and other aircraft. Utilizing GPS to display an aircraft's position more accurately and frequently enables more efficient use of existing airspace because aircraft separation standards can be safely reduced. Routing efficiencies reduce fuel burn and emissions.

- **Area Navigation (RNAV)/Required Navigation Performance (RNP).** RNAV/RNP requires new onboard equipment and approved procedures. Installation or upgrades to existing flight-management systems, installation of a GPS position source and integration with new and existing cockpit displays drive equipment costs. Extensive revisions to airspace and pilot procedures will be needed. RNAV enables aircraft to fly on any path within coverage of ground- or space-based navigation aids, permitting more direct operations. New flight-path procedures decrease the number of miles flown, reducing fuel burn and emissions. Like RNAV, RNP enables aircraft to fly on any path within GPS coverage, and also includes an onboard performance-monitoring capability; RNP enables closer en route spacing and permits more precise and consistent departures/arrivals.

- **Electronic Display Upgrades**. Some aircraft will require the addition of new specialized display screens to utilize ADS-B and RNAV/RNP; some will require a supplemental display, such as an Electronic Flight Bag. These screens will accurately display an airplane's position relative to itself and other aircraft. These displays can also be used to show new optimum flight paths.

- **Ground-Based Augmentation System (GBAS).** GBAS provides additional information to aircraft to allow GPS to be used for landings in low-visibility conditions, minimizing schedule disruptions due to weather and enabling more environmentally friendly procedures. It requires new equipment, ground infrastructure and procedures. Special avionics are necessary to receive the corrected GPS signal information and must be integrated with the aircraft's flight-management system. GBAS also requires several antennas, a broadcast transmitter and a processing unit at each airport. In some cases, a single installation can service multiple airports due to its 30-mile-radius effective range.

- **Localizer Performance with Vertical Guidance (LPV).** LPV procedures leverage satellite-based precision to improve safety and provide all-weather access at thousands of general aviation airports. Using GPS and leveraging the existing Wide Area Augmentation System (WAAS) enables more accurate flight-path guidance. Action is limited to the development, certification and publishing of procedures.

In addition to the many operational, environmental and customer-service benefits discussed above, *NowGen* also will throw off significant stimulative benefits. We estimate that *NowGen* will yield over $12 billion in U.S. economic benefits through 2012, including $7.4 billion in job creation – as many as 167,000 U.S. jobs distributed widely across the country. These are important societal benefits as the country works to recover from the current recession. Given these significant societal benefits, the airline industry should not be forced to shoulder all of the costs associated with *NowGen* – a healthy General Fund contribution is appropriate.

THE 2009 SUMMER SEASON

Thus 2009 summer season is upon us. While we expect overall performance to be somewhat better than last year because there will be less demand and, therefore, less stress on the ATC system this year - a sobering reflection of the weakened economy – we remain concerned about key airports, particularly the New York-area airports. Even with reduced demand, current DOT data demonstrate low performance levels in New York.[6]

	ON-TIME PERCENTAGE	
	Arrival	Departure
NEW YORK NY (JFK)	76.4	80.7
NEW YORK NY (LGA)	63.3	77.1
NEWARK NJ (EWR)	57.4	69.8

For this reason, FAA must continue to pursue measures that offer immediate and near-term capacity and efficiency enhancements. This includes working with the Department of Defense to make military airspace available to commercial aircraft on a consistent basis, pushing forward with airspace redesign initiatives, particularly the New York/New Jersey/Philadelphia project, and working with the Port Authority of New York and New Jersey and the airlines to continue implementing the 77 capacity enhancing initiatives identified by the New York Aviation Rulemaking Committee.

In addition, notwithstanding the need for FAA to establish a new contract with the controller workforce over compensation and work rules, FAA must work with the controllers to improve arrival and departure throughput at the New York-area airports; FAA consistently sets the daily acceptance rate below the benchmark rates at these airports, and then consistently fails to meet even those reduced numbers. This situation must be corrected in a positive, collaborative manner that satisfies the stakeholders; otherwise, the airlines and their customers will continue to be penalized.

RESPONDING TO COMMUNICABLE DISEASES - THE 2009 H1N1 VIRUS

Almost six years ago, in June 2003, ATA President and CEO Jim May came before this Subcommittee to talk about the role that the airline industry played in assisting public health officials to control the spread of severe acute respiratory syndrome (SARS). He said at that time something that is equally true today: While this is a new disease, we have been able to draw on well-established practices to provide medical attention to ill passengers and crew and to report communicable diseases to public health officials.[7] These practices – and the unflagging efforts of the Centers for Disease Control and Prevention (CDC) – have again served the American public well. And once again, the lessons learned from this most recent experience can help us and the federal agencies we work with to limit the impact of future outbreaks.

Of course, some things have changed in the past six years – for the better. While SARS took the public health community as well as the airline industry by surprise, we have been preparing for the past several years for the possibility of a pandemic caused by a novel influenza virus, and this subcommittee was one of the first bodies to discuss the importance of planning for a potential pandemic back in April 2005. As I

[6] *Air Travel Consumer Report*, U.S. Department of Transportation, May 2009 (reporting March 2009 data), Table 7.
[7] Statement of James C. May, President and CEO, Air Transport Association of America, Inc., before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, United States House of Representatives (June 5, 2003).

testified at that time, we recognize that airlines must be part of any comprehensive strategy for controlling potential pandemics.[8]

The fact that some of the planning assumptions were wide of the mark (the disease was associated with a swine-origin rather than avian-origin virus, and the outbreak originated in a country which shares a border with the United States rather than overseas) did not make those preparations any less useful. We have also continued to upgrade the fleet, with the result that almost 100 percent of passenger aircraft with recirculating air operated by our members are equipped with hospital-grade HEPA filters.

Perhaps equally as important, SARS taught all of us the impact that a public health crisis can have on the airline industry, and indeed, on the global economy. In the wake of that experience, the World Health Organization (WHO) adopted revised International Health Regulations, which have as their dual purpose protecting public health and avoiding unnecessary interference with international traffic and trade.[9] Despite the existence of these international regulations, and WHO's clear statement that "[l]imiting travel and imposing travel restrictions would have very little effect on stopping the virus from spreading, but would be highly disruptive to the global community,"[10] more than two dozen countries have imposed special requirements on international air travelers and airlines. These requirements range from completion of a health questionnaire to temperature screening to outright prohibition on flights or passengers from Mexico. And at least two countries – Japan and China – have quarantined airline passengers and crew because someone on the flight showed symptoms of flu. We need a better way to coordinate these public health measures the way that safety standards have been harmonized through ICAO so that international travelers and airlines are not subjected to inconsistent and unanticipated requirements.

Airlines are not in the public health business, but protecting the health and safety of our customers and employees is something we do every day. With the very first reports of the H1N1 outbreak in Mexico and the U.S., we were communicating with CDC to make sure we had the very latest information and guidance, and with Airports Council International (ACI) and our international partners to ensure a coordinated response. Our members followed existing protocols for infection control, supplemented by some modest but meaningful measures like stocking employee break rooms with hand sanitizer and increasing the number of facemasks stocked onboard for use with ill passengers. Equally important was getting accurate information about the risks of exposure and recommended health measures to employees, particularly crew members working flights to Mexico, from credible sources like the CDC and WHO. And of course, common sense plays an important part, particularly when experts tell us that washing one's hands is the single most effective thing you can do to protect your health and the health of others.

While airport passenger health screening was not part of the U.S. response to H1N1, we recognize the need to continue to work with the CDC, DOT and DHS on plans to implement this type of measure should the virus reemerge in the fall, as some predict it will. Our recent experience with screening in other countries will give us insight into what works and what doesn't, and the extent to which these measures are viewed as restrictions on international travel and trade.

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[8] Statement of John M. Meenan, Executive Vice President and Chief Operating Officer, Air Transport Association of America, Inc., before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, United States House of Representatives (April 6, 2005).

[9] World Health Organization, International Health Regulations (2005), Art. 2. The United States is a party to the IHRs, which took effect in 2007.

[10] World Health Organization,"No rationale for travel restrictions" (May 1, 2009), available at http://www.who.int/csr/disease/swineflu/guidance/public_health/travel_advice/en/ .

The groundwork laid over the past year and a half in developing a Risk-Based Border Screening (RBBS) plan is valuable, though we still have some concerns about its feasibility, and there is work yet to be done before it can be implemented. Even though the active screening contemplated in the RBBS plan was not implemented, the ongoing training of CBP officers to recognize and report signs and symptoms of communicable disease was valuable as a form of "passive surveillance." The plans for exit screening are not as far along, and will need to be carefully constructed to avoid placing unnecessary restrictions on international travel and trade. It will be important to get a better understanding of the role of TSA in the public health response over the next few months so that the airlines can coordinate more effectively with the agency in these situations. It is also crucial that CDC has the resources it needs – particularly staffing at the airport-based Quarantine Stations – to work effectively with their airport and airline partners to respond to reports of suspected illness in a traveler. We urge all of the agencies involved in this response to engage with aviation stakeholders to ensure that the plans in place can be implemented expeditiously and cost-effectively without unnecessary disruption to air travel or negative impact to the economy. We stand ready to work with our government and aviation-sector partners to make this country even better prepared for next time.

CONCLUSION

The airline industry has done a good job of addressing customer service issues related to long tarmac delays and, on an objective basis, is providing better customer service today compared to last year and the year before. We recognize, however, that occasional mistakes will occur and that more can be done, so our members are committed to continuing the record of improvement earned over the past two years. It is equally important for Congress to enable the FAA to move forward promptly with NextGen and to accelerate it through *NowGen*. The capacity, efficiency and operational integrity benefits of *NowGen* will result in improved operational performance and associated customer service. They also are critical to meeting the needs of the flying and shipping public and improving the financial condition of the U.S. airline industry.

Before the Committee on Transportation and Infrastructure
Subcommittee on Aviation
United States House of Representatives

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Progress and Remaining Challenges in Reducing Flight Delays and Improving Airline Customer Service

Statement of
The Honorable Calvin L. Scovel III
Inspector General
U.S. Department of Transportation

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to testify today on progress and remaining challenges with the Department of Transportation's (DOT) and the Federal Aviation Administration's (FAA) efforts to reduce flight delays and improve airline customer service. As requested by the Subcommittee, my statement today will focus on the three following issues:

- factors that contributed to last year's decline in delays and expectations for the near term,
- progress and challenges in addressing congestion in the New York area and systemwide, and
- actions taken and still needed to address airline customer service issues.

SUMMARY

The air traveler experience in 2008, as measured by DOT, improved over 2007. We recently issued our annual analysis of aviation trends, which also found that the percentage of delayed flights dropped significantly in the last 6 months of 2008—down to 22 percent compared to 27 percent in 2007.[1] We note, however, that this decrease was primarily driven by flight cutbacks that airlines implemented in the face of last year's unprecedented fuel prices and onset of the global economic downturn.

Despite the recent drops in overall airline delays, high levels of delay continued at larger, congested airports such as Newark, John F. Kennedy (JFK), and LaGuardia. Delays at these airports are a concern because they have a "ripple effect" throughout the National Airspace System.

With fewer planes in the air and the resulting slowdown in passenger traffic, DOT also saw a drop in consumer complaints in 2008. These were down by about 19 percent overall. Also, with flight schedules for summer 2009 reduced compared to summer 2008, the expectation is that on-time performance will hold steady or improve further.

Although the current delay statistics and customer service trends look favorable, history shows that traffic will rebound given the intrinsic value of air transport to the Nation's livelihood. Therefore, it is highly unlikely that the current positive trend can be sustained. FAA now has an opportunity to strategically position itself for a rebound in air travel, particularly at already congested airports. Absent changes, rising air travel will increase the number of delays and cancellations as well as air traveler dissatisfaction. It is therefore important that FAA continually improve efforts

[1] OIG Report Number CC-2009-039, "Aviation Industry Performance: A Review of the Aviation Industry in 2008," May 6, 2009. OIG reports and testimonies are available on our website: www.oig.dot.gov.

to reduce delays and that DOT complete initiatives to enhance protection for air travelers.

Initiatives that can enhance the flow of air traffic are particularly critical at chokepoints such as the New York airports. Following record-breaking flight delays in the summer of 2007, DOT chartered an Aviation Rulemaking Committee (ARC) to explore ways to reduce flight delays and congestion in the New York area. In its December 2007 report, the ARC recommended 77 initiatives, and we are reviewing FAA's progress in implementing them. While FAA reports that more than one-third of the initiatives are complete, most of these are not used or are used infrequently. Moreover, it is not clear that the completed initiatives have actually reduced delays since FAA lacks a means to measure their impact. Our work is ongoing, but we believe FAA should reevaluate the 77 initiatives and determine what reasonably can be accomplished in terms of delay reduction at the three New York airports.

Enhancing capacity and reducing delays systemwide ultimately depends on the development and implementation of the Next Generation Air Traffic Management System (NextGen). However, this is a long-term, complex effort that will require billion-dollar investments from both FAA and airspace users. Therefore, it is essential that FAA continue to pursue a number of short-term projects that can enhance the flow of air traffic. These include new airport infrastructure, airspace redesign, and performance-based navigation initiatives. Congress should have a better understanding of what can be expected from NextGen in the mid-term (i.e., 2015 to 2018) once a joint Government/industry task force completes its work this summer.

Since we testified in April 2008,[2] DOT has made progress on several fronts to improve customer service for air travelers but has yet to complete a critical rule that would provide enhanced protections to air travelers. These protections include airline contingency plans for lengthy delays, designees to respond to consumer complaints, and published delay and complaint data. Once the rule is finalized, a major challenge for DOT will be to effectively oversee and enforce the air carriers' compliance with these new requirements.

DOT also formed a National Task Force to develop a model contingency plan for dealing with long, on-board delays. The task force issued its report to the Secretary of Transportation last November. We commend all the representatives of airlines, airports, consumer groups, and the Department who served on this task force for the good faith effort that led to the development of the report. While the task force's report offered general, voluntary guidance to airlines, airports, Government agencies, and other aviation service providers, additional guidance is needed and should include

[2] OIG Testimony Number CC-2008-058, "Status Report on Actions Underway To Address Flight Delays and Improve Airline Customer Service," April 9, 2008.

two key factors of customer service regarding delays: defining the time period that warrants efforts to meet passengers' essential needs and setting a time limit on how long to wait before deplaning passengers.

FACTORS THAT CONTRIBUTED TO DECLINES IN DELAYS AND THE NEAR-TERM OUTLOOK

The industry saw a profound shift as U.S. airlines suffered $5.8 billion in operating losses last year and multiple airlines went bankrupt. Airlines responded to their changing environment by cutting flights, raising airfares, and charging new fees for services such as checked baggage. Although these measures helped some airlines to slow operating losses, the cutbacks reduced options for passengers. This, combined with the deepening recession, led to a decline in domestic passenger traffic. By the last quarter in 2008, traffic had declined by approximately 10 percent as compared to the same period in 2007.

The number of arriving flights at the 55 airports tracked by FAA declined by 10 percent for the 7-month period between September 2008 and March 2009 compared to the prior year. This represented an average decline of 2,300 daily flights. Over the same period, arrival delays and cancellations were down 29 percent and 23 percent, respectively, at these airports.

The rate of delayed flights also improved during this period, declining to 21 percent compared to 27 percent in 2007. However, the average length of a delayed flight remained relatively unchanged, declining by less than a minute to 54 minutes.

While the decrease in delays was largely driven by reduced flight operations, other factors also played a role. For example, improved on-time performance was aided by the opening of new runways at Washington-Dulles, Chicago O'Hare, and Seattle-Tacoma. Airlines also claim that new fees for checked bags have reduced the number of bags handled by the airlines and aided in the more timely operation of flights.

Another key factor was airlines' flight scheduling practices. The flight scheduling changes implemented by airlines took two broad forms:

- Airlines increased the scheduled flight times for two-thirds of the 2,500 domestic markets that we examined. Although this practice led to a perceived decline in flight delays, it resulted in an increase in average flight time.

- Airlines selectively increased the time between the arrival of an aircraft at an airport and its next departure. This increase in the "turnaround" time allows the airline to absorb inbound delays and minimizes the ripple effect of the delay into subsequent flights.

However, as in the past, reductions in scheduled flights, and consequently delays, did not translate uniformly across all airports within the National Airspace System. As shown in the table below, traditionally congested airports such as JFK, Newark, LaGuardia, Atlanta, and Chicago O'Hare saw below average reductions in scheduled flights and above average rates of flight delays.

Table. Change in Scheduled Flights and Rate of Flight Delays at Congested Airports (September 2008 - March 2009 vs. September 2007 - March 2008)

Airport	Rate of Delayed Flights	Change in Scheduled Flights
Average for remaining 48 airports tracked by the FAA	**19.7%**	**-13.3%**
Newark	36.1%	-3.2%
Kennedy	29.1%	-3.7%
LaGuardia	27.9%	-6.7%
San Francisco	27.1%	-3.9%
Miami	26.6%	-11.3%
Atlanta	24.9%	-3.9%
Chicago O'Hare	22.6%	-7.3%

Delays at the New York Airports Have System-Wide Effects

Continued delays at the three New York area airports—JFK, LaGuardia, and Newark—are a significant concern because, as FAA and others have stated, delays at those airports have a ripple effect nationwide due to their high volume, complex traffic patterns, and airspace management problems. In summer 2008, FAA deployed a variety of measures to manage the rate of flight operations and delays at these airports:

- **Operational Caps:** FAA hoped to reduce the average length of delays and extended tarmac delays by imposing caps on flights at Newark and JFK. However, the maximum number of hourly flight operations permitted at Newark and JFK under the caps program was actually greater than the hourly flight operations from those airports during summer 2007. As a result, FAA acknowledged that the number of delayed flights at Newark and JFK would likely increase during summer 2008 over the prior summer. However, they would be lower than the scenario in which airlines were allowed to schedule flights without any limiting factors.

- **Hourly Slot Limitations at LaGuardia:** Similar to the operational caps at Newark and JFK, these slots limited the number of flight operations into and out of LaGuardia airport at 75 hourly flight operations.

- **Ground Delay Programs (GDP) at All Three Airports:** FAA employed GDPs, (i.e., the practice of holding inbound flights at their point of origin because of

capacity constraints at the destination airport) at each of the three New York airports extensively on good weather days[3] as a means to manage excess demand. The number of days subjected to GDPs jumped 25 percent in summer 2008 compared to the previous summer, and the number of flights affected increased by 33 percent at the three New York airports combined (60 percent at JFK). From the perspective of on-board passengers, GDPs at the 3 New York airports resulted in an estimated 3.6 million passenger hours of delay during summer 2008, a 19-percent increase over summer 2007.

Although these capacity management measures reduced the average length of a flight delay, they resulted in the minutes of delays being distributed over a greater number of delayed flights. FAA plans to continue using these measures to manage delays in the three New York airports for summer 2009. While FAA plans to maintain the caps on flight operations from Newark and JFK at the same levels as last summer, it has amended the rule governing flight operations at LaGuardia to reduce the number of authorized slots from 75 to 71—acknowledging that the previous level saturated the capacity of the airport even in good weather and led to serious delays when weather conditions deteriorated.

Our analysis shows that airline schedules for LaGuardia for summer 2009 exceed FAA's desired operational levels by 41 daily operations. Presently, FAA is relying on airlines to voluntarily relinquish their slots, which FAA will then retire permanently to reach its desired operations at LaGuardia.

At the request of the Chairman, we are assessing the dynamics of the delay situation at these three airports as well as the airports' role in either absorbing or propagating delays to the rest of the National Airspace System. We are also working with FAA to develop an analytical tool that may allow greater visibility into these delay factors.

Our preliminary assessment of flight activity data suggests that at their peak (during the summer months) more than 1,400 aircraft fly through 1 of the 3 airports on a typical day, and almost a third of these fly through 1 of those airports multiple times daily, up to 4 times a day. Those aircraft are part of a network of 5,400 daily flight operations consisting of 3,500 flights that either take off or land at 1 of the 3 airports and 1,900 non-New York flight segments. Altogether, the New York-centered network connects 122 domestic and 89 international destinations in 52 foreign countries. We will continue to study the relationship between the three New York airports and the National Airspace System in order to develop a full understanding of the system-wide impact of these airports on delays.

[3] Ground delay programs (GDP) are used primarily to manage capacity issues at the destination airport during inclement weather conditions.

Near-Term Outlook for Delays

Barring extended severe weather, we expect the improved on-time performance experienced over the last 8 months to continue through the summer and fall. Advanced schedules published by the airlines reveal that the reductions in scheduled flights implemented last fall will continue into 2009, 4 to 5 percent lower than last summer.

However, we are concerned that with improved on-time performance, less congestion, and the pressure for cost reductions, airlines will be tempted to tighten scheduling to reduce scheduled flight times and flight turnaround times, which could have an adverse impact on delays.

We also note that while air travelers may experience fewer delays this summer, they will likely have fewer choices of flights as airlines continue to reduce services. Air travelers can also expect airlines to continue to charge fees for previously included services, such as checked baggage and seat selection.

Over the long term, economic forecasts predict a positive turn in the economy and upward growth in airline traffic. As we have seen most recently, even small reductions in flight activity produce large reductions in delays. Conversely, we can expect that small increases in flight operations will gradually produce larger increases in delays.

PROGRESS AND REMAINING CHALLENGES IN ADDRESSING CONGESTION IN THE NEW YORK AREA AND THROUGHOUT THE NATIONAL AIRSPACE SYSTEM

The long-term solution to addressing delays and congestion system-wide focuses on the development and implementation of NextGen. However, much work is needed to set realistic expectations and funding profiles for this effort. In response to our recommendations and industry's concerns, FAA is now focusing on the mid-term goals for NextGen, targeted for the 2015 to 2018 timeframe, but must do more to clearly define these priorities.

As it works towards NextGen implementation, FAA must pursue near-term efforts that can enhance the flow of air traffic, particularly at critical chokepoints such as the New York airports. In addition, there are a number of short-term initiatives that can help boost capacity and reduce delays throughout the system before NextGen technologies are fully in place.

FAA Needs To Reevaluate Initiatives To Reduce Gridlock at the New York Airports

Following record-breaking flight delays in the summer of 2007, the Secretary of Transportation established an ARC to identify ways to help reduce flight delays and

congestion at the New York area airports. The ARC was comprised of officials from DOT, FAA, the Port Authority of New York and New Jersey (the Port Authority), airlines, and other aviation stakeholders. In its December 2007 report, the ARC highlighted 77 initiatives. The report also noted that one person was needed to facilitate implementation of delay reduction initiatives in the Northeast. At the request of the Chairman, we recently initiated an audit of FAA's progress in implementing the 77 ARC initiatives. The following discusses our findings to date.

Completed Initiatives Are Not Being Used or Are Used Infrequently

While FAA has reported completing 30 of the 77 initiatives, 24 are not being used or are used infrequently. These initiatives address air traffic control procedures designed to reduce congestion or improve aircraft arrival and departure efficiencies. It should be noted that many of the completed initiatives were underway prior to creation of the ARC. While various factors have hampered the use of these completed initiatives, the main three causes include limited tactical need, operational or technical issues, and controller concerns. For example:

- **Limited Tactical Need:** Eight completed initiatives have been used infrequently due to the limited number of situations in which they were needed (e.g., severe weather) or because of decreased air traffic demand. For example, a proposed route into Canada during severe weather requires further testing and may have limited application due to increased airline fuel, equipage requirements, and operating costs. Moreover, initiatives aimed at simplifying existing airspace sectors will be of little use until air traffic demand returns to previous high levels.

- **Operational or Technical Issues:** Eleven completed initiatives are not being used or are undergoing further evaluation due to various operational and technical issues. For example, an initiative to reroute flights from the Caribbean to Newark was discontinued because of added airline fuel and operating costs. Similarly, an initiative to spread delays to other Northeast airports was never implemented because of airline concerns over how these delays would be distributed.

- **Controller Concerns:** Five completed initiatives are opposed by controllers because of workload, safety, and operational concerns. For example, controllers oppose an initiative to reduce excessive spacing in the New York area because of increased risk of incurring operational errors (e.g., loss of required separation between aircraft). Controllers have also argued against simultaneous instrument approaches at JFK due to additional staffing requirements and a lack of demonstrated benefits.

Regardless of how many of the ARC initiatives are completed, FAA lacks a means to determine whether they can reduce delays because it did not establish performance measurements prior to implementing the initiatives. As a result, FAA cannot

determine whether current reductions in New York flight delays are due to completed ARC initiatives or to the recent drop in demand for air travel.

The Remaining Initiatives Face Various Challenges Before They Can Be Fully Implemented

The remaining 47 initiatives face challenges such as ongoing litigation, special equipment requirements, and questionable practicality. Moreover, many of these initiatives are part of larger, nationwide FAA programs (e.g., airspace redesign and NextGen) and will not be completed until 2012 or later. For example:

- **Litigation:** Initiatives related to a redesign in the New York/New Jersey/Philadelphia airspace face 12 lawsuits challenging the environmental review process. Depending on the outcome from these lawsuits, implementing airspace redesign could be stopped or significantly delayed while FAA completes additional environmental work.

- **Equipment:** FAA is pursuing two initiatives that rely on aircraft avionics for improved navigation—Area Navigation (RNAV) and Required Navigation Performance (RNP). RNAV allows aircraft to fly any desired flight path without the limitation imposed by ground-based systems. RNP adds an on-board performance monitoring and alerting capability for pilots, which allows aircraft to fly more precise paths into and out of airports. However, RNAV and RNP procedures require the installation of specialized equipment on commercial aircraft.[4] Such equipment, which can cost upwards of $500,000 per aircraft, has not been installed on over one-third of commercial aircraft nationwide.

- **Practicality:** One initiative would require purchasing the property rights from a hotel and another business near Newark airport and installing an approach lighting system—even though FAA terminated a similar project nearly 10 years ago. Another initiative could require tunneling under a runway safety area and rerouting an access road at LaGuardia airport in an effort to improve the flow of departing aircraft. Moreover, FAA officials questioned whether the benefits from these projects would warrant the multimillion-dollar investment.

- **Nationwide FAA Programs:** Most of the remaining initiatives are part of nationwide FAA programs that will not be completed for many years. These include initiatives to redesign the New York airspace (2007 to 2012), establish RNP procedures (2009 to 2012), construct taxiways at JFK (2009 to 2014), and implement mid-term NextGen goals (2012 to 2018). Until these programs are completed, the anticipated benefits from the associated ARC initiatives will not be fully achieved.

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[4] Later this year, the OIG plans to issue a report on FAA's oversight of RNP procedures that are being developed by third parties.

Overall, FAA needs to rethink its efforts to unlock the New York airspace. This will involve resolving operational and technical issues as well as controller concerns that prevent the full use of completed ARC initiatives. FAA also needs to complete ongoing efforts to establish a process for evaluating and implementing the remaining ARC initiatives—including the development of performance measures.

A Number of Short-Term Initiatives for Enhancing Capacity Are Promising if Kept On Track

At the request of the Chairman, we reported last September on several initiatives that have the most potential to enhance capacity and reduce delays within the next 5 years.[5] These include new airport infrastructure, airspace redesign, and navigation initiatives.

New Airport Infrastructure

According to FAA, building new runways provides the largest increases in capacity. Currently, there are four key runway projects underway at Boston, Charlotte, Chicago (O'Hare), and New York (John F. Kennedy) airports. These projects are expected to be complete by 2014. The capacity benefits from these projects, however, cannot be realized without new air traffic control procedures and improved airspace redesign.

Challenges that can impede the progress of new runway projects include the years of planning required, extensive environmental reviews, coordination among numerous stakeholders, and legal issues. Another challenge is making corresponding improvements to an airport's infrastructure (e.g., terminal gates and passenger waiting areas). Unfortunately, building a new runway is not an option for some airports, like New York's LaGuardia airport.

Airspace Redesign

Changes in airspace are critical to realize the full benefits of new runways and can enhance capacity without new infrastructure. Currently, FAA is pursuing six airspace redesign projects nationwide, including a major but controversial effort to revamp airspace in the New York/New Jersey/Philadelphia area. Once implemented, FAA believes this effort could reduce delays by as much as 200,000 hours. For fiscal year (FY) 2009, FAA plans to spend $11.2 million on airspace redesign projects.

FAA has done a better job of coordinating airspace redesign efforts since we reported on the program in 2005.[6] We remain concerned, however, that FAA's airspace redesign efforts still do not function as a national program since FAA facilities are now using their own resources to redesign airspace without coordinating with

[5] OIG Report Number AV-2008-087, "Observations on Short-Term Capacity Initiatives," September 26, 2008.
[6] OIG Report Number AV-2005-059, "Airspace Redesign Efforts Are Critical To Enhance Capacity but Need Major Improvements," May 13, 2005.

Headquarters. This creates the potential for disconnects between airspace projects. FAA is developing procedures to address this problem, but they have not yet been finalized.

Performance-Based Navigation Initiatives

FAA plans to publish at least 50 RNAV and 50 RNP routes per year between FY 2009 and FY 2012 with priority given to the New York, Chicago, and Dallas areas. These new procedures can reduce fuel burn, increase capacity, boost controller productivity, and reduce the impact of aircraft noise.

Challenges facing this initiative include close coordination with airspace redesign as future RNAV/RNP routes shift away from localized operations toward "networking" city pairs (e.g., Washington, DC, and Chicago, Illinois). It is also important to note that current RNAV/RNP routes are only available to well-equipped aircraft and trained crews, and air carriers must have certain qualifications to fly them. To get the full benefits of RNAV/RNP, modifications to FAA's automation systems in the terminal environment for merging and spacing aircraft will likely be needed.

PROGRESS HAS BEEN MADE ON MANY OF DOT'S INITIATIVES TO ADDRESS CUSTOMER SATISFACTION, BUT FURTHER ACTIONS ARE NEEDED

Airlines' service reductions in 2008 contributed to a slowdown in passenger traffic, and airlines saw a corresponding drop in consumer complaints. As a result, DOT reported improvements in its performance measurements that gauge customer satisfaction. DOT has also moved out on several initiatives to improve the accountability, enforcement, and protection afforded air travelers since we last testified before the Subcommittee in April 2008. These include, among other things, doubling the amount of compensation for passengers involuntarily bumped from their flights and gathering data for disrupted flights to better understand the magnitude of on-ground delays.

DOT also established its National Task Force responsible for developing a model contingency plan to deal with long, on-board delays. The task force completed this effort and, in November 2008, issued its report to the Secretary of Transportation. In our opinion, however, more action is needed since the report only offered broad, voluntary guidance on policies and practices.

Performance Measurements, as Reported by DOT, Indicate Improvements in the Air Traveler Experience During 2008

In 2008, the air traveler experience improved over 2007. Based on DOT data:

- Consumer complaints were down about 19 percent overall, with the number one complaint—flight delays, cancellations, and misconnections—down 27 percent, the lowest percentage recorded since 2003.
- 25 percent fewer reports were filed for mishandled checked baggage.
- Long, on-board delays overall dropped just over 14 percent, with a significant drop of nearly 27 percent for delays falling within the range of 3 hours or more.
- Chronically delayed flights[7] decreased by approximately 28 percent.
- The number of passengers involuntarily bumped from their flights fell by about 2 percent.

While these appear to be positive trends, these improvements were primarily driven by airlines' capacity cuts and service reductions and the corresponding decline in passenger traffic. We saw the same pattern of improvement following the terrorist attacks of September 11, 2001. Therefore, the airlines must follow through with their commitment to continuously improve airline customer service since any rebound in air travel brings a corresponding downturn in the performance measurements used to gauge the air traveler experience.

DOT Amended the Boarding Compensation Rule

In 2001, we recommended the airlines petition DOT to increase the monetary compensation payable to involuntarily bumped passengers.[8] At that time, compensation to involuntarily bumped passengers had not been raised since 1978. On April 3, 2001, the Air Transport Association (ATA) petitioned DOT for a rulemaking to increase the involuntarily denied boarding compensation. ATA also proposed to broaden the applicability of denied boarding compensation. Aircraft with 60 seats or fewer were exempt from denied boarding compensation requirement. ATA proposed broadening this requirement to include aircraft with more than 30 seats.

In April 2008, DOT amended the rule, which was effective May 19, 2008. The amendment broadened the applicability of denied boarding compensation as the ATA petitioned and doubled the amounts for that compensation. Specifically, if a passenger is involuntarily bumped and delayed between 1 and 2 hours, the passenger

[7] We define chronically delayed flights as those flights canceled or delayed 30 minutes or more at least 40 percent of the time during a single month.

[8] OIG Report Number AV-2001-020, "Final Report on the Airline Customer Service Commitment," February 12, 2001.

can receive 100 percent of the cost of the remaining ticket to the destination but not more than $400 (previous limit was $200). If the delay is more than 2 hours (4 hours for international flights), or the air carrier cannot arrange alternate transportation, the passenger can receive 200 percent of the cost of the remaining ticket but not more than $800 (previous limit was $400).

Also, instead of cash, the air carrier can offer the passenger free or reduced air transportation of equal or greater value than the amount of the cash compensation. The carrier must also inform the passenger of the amount of cash that would otherwise be paid, and the passenger can choose either form of compensation. In our view, DOT's amendment is a notable step toward improving airline customer service.

BTS Issued Final Rulemaking To Gather Data on Disrupted Flights To Better Assess Ground Delays

The Bureau of Transportation Statistics (BTS) issued a final rule to collect additional data elements when flights are canceled, diverted, or returned to the gate. These elements fill in data gaps and provide a more accurate portrayal of on-ground delays. Effective October 1, 2008, air carriers started reporting this new information to BTS.

Prior to this rule, delay statistics that airlines report to BTS did not accurately portray the magnitude of long, on-board delays because (1) if a flight taxies out, sits for hours, and then taxies back in and is canceled, the delay is not recorded in delay statistics and (2) if a flight is diverted and sits on the tarmac for an extended period of time, the flight is not recorded in delay statistics.

In the first month of reporting under the new requirement, BTS identified errors or inaccuracies in the new information reported by several air carriers (these have since been corrected). Specifically, for the period October 2008 through March 2009, BTS data show that of the 3,202,606 total flights, 460 experienced long, on-board delays of 3 or more hours—115 of these had delays of 4 or more hours.

Although long, on-board delays make up less than 1 percent of total flights, this still does not dismiss the fact that more than 32,500 passengers were inconvenienced. Therefore, the airlines need to continue efforts to mitigate long, on-board delays and their impact on air travelers.

DOT's National Task Force's Model Contingency Plan To Minimize the Impact of Long, On-Board Delays Lacks Specificity in Key Customer Service Areas

As we recommended in our September 2007 report,[9] DOT established a National Task Force of representatives from Government agencies, airlines, airports, and

[9] OIG Report Number AV-2007-077, "Actions Needed To Minimize Long, On-Board Flight Delays," September 25, 2007.

consumer groups to develop model contingency plans for minimizing the impact of long, on-board delays. Our April 2008 testimony included a recommendation that DOT's Office of General Counsel—in collaboration with FAA, airlines, and airports—review incidents involving long, on-board ground delays and their causes; identify trends and patterns of such events; and implement workable solutions for mitigating extraordinary flight disruptions. In response, DOT assigned this responsibility to the National Task Force.

The National Task Force initiatives were as follows:

- Develop model contingency plans for minimizing the impact of lengthy tarmac delays.
- Be responsible for reviewing incidents involving long, on-board delays and their causes; identify trends and patterns of such events; and recommend workable solutions for mitigating the passenger impact of extraordinary flight disruptions.
- Review existing airline and airport contingency plans identifying best practices for extended tarmac delays.
- Report the results of its efforts and a description of the model contingency plan developed to the Secretary.

Several meetings were convened over 9 months with the first meeting held in February 2008. On November 12, 2008, the task force submitted to the Secretary its "Development of Contingency Plans for Lengthy Airline On-Board Ground Delays." Office of Inspector General staff attended each of the task force's meetings and witnessed the good faith effort that led to development of this plan, and we commend the task force members for these efforts. The plan details items such as:

- the causes of long, on-board flight delays;
- the roles and responsibilities of airlines, airports, Government agencies, and other aviation service providers during such events; and
- the processes associated with planning, coordinating, and communicating before and during such events.

However, the plan only provides broad guidance on effective policies and practices. Also, industry's participation in the plan is strictly voluntary and cannot be enforced unless a regulation is issued to require industry compliance.

Upon issuance of the plan, the task force charter was terminated. While DOT continues to investigate incidents involving long, on-board delays, it still needs to place more focus on identifying trends and patterns of these events and recommending solutions to mitigate extraordinary flight disruptions.

Further, in our opinion, the task force guidance lacked two key areas that have been sticking points for the air carriers since at least 2000 when we first reviewed airline customer service: (1) no definition of what constitutes an extended period of time for meeting passengers' essential needs during long, on-board delays and (2) no set time limit on delay durations before deplaning passengers.

As we have testified in the past, the trigger thresholds for meeting passengers' essential needs vary from a half hour to 2 hours on arrival and from 1.5 hours to 3 hours on departure. It is unlikely that passengers' definition of an extended period will vary depending upon which airline they are flying. Therefore, a consistent policy across the airlines would be helpful to passengers.

Although we have cautioned against a "one size fits all" policy for deplaning passengers, we believe the task force guidance could have recommended an acceptable time-limit range on delay durations before deplaning passengers, such as 3 to 5 hours. Based on our analysis of the ATA member airlines' policies, we found that most choose to wait between 1 and 5 hours before deplaning passengers caught in an on-board delay. In our opinion, on-board delays in excess of 5 hours should be preventable unless an event that triggers such an extended period of time is truly extraordinary and involves protecting the safety or security of passengers.

An opportunity still exists to address these two key factors of customer service. As discussed below, DOT has a proposed rule to enhance airline passenger protections. One provision of the rule requires airlines to adopt contingency plans for lengthy tarmac delays and incorporate them in their contracts of carriage. DOT needs to reconsider modifying the requirements under this provision to include (1) a definition of what constitutes an extended period of time for meeting passengers' essential needs during long, on-board delays and (2) a time-limit range on delay durations before deplaning passengers. Absent such requirements, air travelers will not have a clear understanding of what to expect.

DOT Needs To Finalize Rulemaking To Enhance Airline Passenger Protections and Effectively Oversee Airline Efforts To Meet the New Requirements

In our September 2007 report, we recommended, among other things, that DOT require airlines to clarify delay terminology, set limits for delay durations before deplaning passengers, and establish targets to reduce chronically delayed flights. To address our recommendations, DOT issued a proposed rule in December 2008 seeking industry comments on whether it should adopt a rule to enhance airline passenger protections. The comment period on the rule closed March 9, 2009. DOT has reviewed the comments received but has not made a final decision on what will be included in the final rule.

In its rule, DOT proposes that airlines be required to:

- **Adopt contingency plans for lengthy tarmac delays and incorporate them in their contracts of carriage.** Each plan would require, among other things, the maximum tarmac delay that the airline will permit; the amount of time on the tarmac that triggers the plan's execution; a plan to meet passengers' essential needs, such as food, water, and lavatory facilities; and assurance that the plan has been coordinated with the airport operator. Under this provision, DOT has an opportunity to address the two key factors of customer service regarding on-board delays.

- **Respond to consumer problems.** Each airline would be required to, among other things, designate an employee who resides at the airline's system operations center and at each airport dispatch. This employee would be part of the team that is responsible for monitoring the impact of flight delays; cancellations; and long, on-board delays and would provide input on decisions concerning which flights are canceled and which flights are subject to long, on-board delays. Each airline would also be required to respond to each passenger complaint within 30 days.

- **Publish delay data on their Internet sites.** Each airline would be required to report its prior month's on-time performance to include the percentage of on-time arrivals, arrivals more than 30 minutes late, flights that were late more than 50 percent of the time, and cancellations. Currently, the airlines are required to disclose on-time performance only upon request from customers. To date, only 5 of 11 ATA airlines report on-time performance on their Internet sites.

- **Publish complaint data.** Each airline would be required to disclose on its Internet site the number of complaints received regarding tarmac delays, missed connections, and failures to meet the essential needs of passengers affected by delayed or canceled flights.

- **Audit their compliance with their customer service plans.** The ATA airlines agreed to establish quality assurance and performance measurement systems and conduct internal audits to measure compliance with the Airline Customer Service Commitment[10] provisions and customer service plans. This provision dates back to a recommendation we made in our 2001 report. Only a few ATA airlines have these measures in place today.

The requirements in the pending rule are new, and DOT's Office of Aviation Enforcement and Proceedings will be challenged to develop and implement an effective oversight and enforcement strategy, given its limited resources.

[10] The ATA carriers, working with Congress, developed the Airline Customer Service Commitment in June 1999 to demonstrate dedication to improving air travel.

CONCLUSION

Notwithstanding the uncertainty facing the aviation industry, FAA and DOT now have an opportunity to strategically position themselves for a rebound in air travel. Reducing delays at already congested airports and improving the air travel experience will depend on several efforts.

The long-term solution to reducing delays and congestion depends on NextGen implementation. However, much work is needed to set realistic expectations and funding profiles for this effort. This summer's results from the joint Government/industry task force on NextGen's mid-term goals will be important as FAA may need to significantly adjust its capital budgets and plans. Also, FAA will need to maintain efforts to ensure it can train the large numbers of developmental controllers currently in the system. In the near term, FAA and DOT must focus on enhancing the flow of air traffic at critical chokepoints in the system—a key priority is reevaluating the 77 ARC initiatives to determine what reasonably can be accomplished in terms of delay reduction at the three New York airports.

With regard to airline customer satisfaction, DOT has made commendable progress toward a number of initiatives but must expedite efforts to finalize the rule to enhance airline passenger protections. DOT must work now to position itself to oversee air carriers' compliance with the new requirements included in the final rule.

This concludes my statement, Mr. Chairman. I would be happy to answer any questions that you or other Members of the Subcommittee may have.

U.S. House of Representatives
Committee on Transportation and Infrastructure

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June 18, 2009

The Honorable Calvin L. Scovel, III
Inspector General
U.S. Department of Transportation – W70-300
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Inspector General Scovel:

On May 20, 2009, the Subcommittee on Aviation held a hearing on "Aviation Consumer Issues: Emergency Contingency Planning and Outlook for Summer Travel."

Attached are questions to answer for the record. I would appreciate receiving your written response to these questions within 14 days so that they may be made a part of the hearing record.

Sincerely,

Jerry F. Costello
Chairman
Subcommittee on Aviation

Questions for the Honorable Calvin L. Scovel III, Inspector General, DOT from Chairman Jerry F. Costello House Subcommittee on Aviation Hearing on Aviation Consumer Issues: Emergency Contingency Planning and Outlook for Summer Travel
May 20, 2009

1. Mr. Scovel, are the Federal Aviation Administration's (FAA) limits on scheduled operations at LGA, JFK, and EWR working? Does FAA have a mechanism to measure whether they are effective?

   Answer: FAA's limits on scheduled operations at Kennedy, LaGuardia, and Newark airports by themselves were not sufficient to reduce flight delays. However, when these operational limits were combined with Ground Delay Programs (GDP), which hold inbound flights at their point of origin, FAA was able to reduce delays.

   During the summer of 2008, FAA used limits on flight operations at Kennedy, LaGuardia, and Newark airports to control the growth of operations and to reduce the length and number of delays. FAA limited Kennedy and Newark flight operations to 80 and 83 per hour, respectively, which was less than the level of flights that airlines had initially scheduled.

   Moreover, severe time-of-day peaking was reduced as flights were more evenly spread throughout the day. However, these operational limits still permitted more flights than the airports could handle, so FAA increasingly use GDPs—even in good weather—to achieve their delay reduction goals. As a result, the three main New York airports experienced reductions in several delay measures.

CHANGE IN DELAY AT NEW YORK AREA AIRPORTS (May – August 2008 vs. May – August 2007)			
	% Change in No. of Delayed Arrivals	% Change in Average Time of Arrival Delay	% Change in Arrival Delays > 2 Hours
Kennedy	-10.2%	-15.4%	-21.9%
Newark	-1.1%	-9.5%	-12.7%
LaGuardia	-5.0%	-11.7%	-23.3%

Source: FAA

   While FAA has no unique mechanism to measure the effectiveness of operational limits at New York airports, the Agency's Command Center and New York TRACON continuously monitor and manage New York flight operations. By comparing scheduled air traffic demand with airport capacity,

FAA determines whether operational limits alone will contain delays or if GDPs are necessary.

2. Mr. Scovel, in your written testimony you state that although FAA's capacity management measures have reduced the average length of a delay, it resulted in the minutes of delays being distributed over a greater number of delayed flights. Please explain. What steps can the FAA or Department of Transportation take to remedy this situation?

   Answer: In summer 2008, the number of arrival delays at New York airports decreased when compared to the summer of 2007. This improvement, as well as reductions in the average length of delays and the number of long delays, was achieved, in part, through a 33 percent increase in GDPs. FAA normally uses GDP only when weather or other unusual circumstances reduce an airport's capacity for accepting arriving flights. However, FAA used GDP more frequently last summer, even during good weather, when demand exceeded airport capacity.

   In order to affect fewer flights with GDP programs, FAA needs to continue to refine its air traffic management efforts managed by the Command Center. A number of improvements (software enhancements) are under consideration that could sharpen the focus on GPD programs and limit fewer flights. Also, FAA needs to continuously monitor flight delays and airline scheduling practices at the New York airports and take appropriate actions. We note that FAA recently announced its intention to reduce flight operations at LaGuardia airport from 75 per hour to 71 per hour, and is discussing the delay problem with airspace users.

3. Mr. Scovel, do you have any insights on how controller staffing issues affect delays-both generally and specifically in the New York area?

Answer: To our knowledge, controller staffing has not been a factor in causing delays in the New York area. As illustrated by the chart, all five New York area air traffic facilities were staffed at or above the validated staffing ranges for the location, as of March 2009.

STAFFING AT NEW YORK AIR TRAFFIC CONTROL FACILITIES (As of March 28, 2009)						
Facility	CPC [1]	CPC IT [2]	Developmental Controllers	Total	Staffing Range	Training %
Kennedy	20	6	13	39	29-35	49%
LaGuardia	21	6	8	35	29-35	40%
Newark	27	2	5	34	31-37	21%
TRACON	168	7	45	220	180-220	24%
Center	235	9	80	324	242-296	27%

[1] Certified Professional Controller
[2] Certified Professional Controller In Training
Source: FAA

However, a significant watch item for the Committee will be the number of controllers in training at the New York facilities. The situation at JFK is a particular concern because that facility now has nearly 50 percent of its workforce in training (developmental controllers as well as transferred veteran controllers). The current national average of controllers in training is about 27 percent.

4. Mr. Scovel, the FAA has reported that 30 of the 77 New York Aviation Rulemaking Committee (ARC) initiatives have been substantially completed. You have reported that 24 of the 30 items are not being used or are used infrequently. Based on your assessment, what must FAA do to complete and fully utilize all 77 initiatives?

   Answer: FAA needs to reassess the initiatives to determine if they are indeed adequate, achievable solutions. This reassessment should also include the evaluation of possible alternatives and factors in delay reduction proposals. The effort should include operational modeling, feasibility studies, and cost-benefit analysis, which is the approach being developed by the New York Area Program Integration Office—which is headed by the "Czar" for the area. FAA also needs to

   - report initiatives as "complete" only if they are available for use and provide measurable benefits,
   - resolve remaining operational and technical problems and address controller opposition to using initiatives based on workload, safety, and operational concerns,
   - fully institute the New York Area Program Integration Office Delay Reduction Implementation Plan, and
   - provide that office sufficient support to fulfill its mission and ensure the timely completion of remaining initiatives.

5. Based on your review of the ARC's 77 initiatives, what important lessons can be applied to the NextGen Mid-Term Task Force?

   Answer: The implementation of the 77 ARC initiatives provides three important lessons that can be applied by the NextGen Mid-Term Task Force.

   - First, the Task Force should have a clear understanding of what projects can and should be accomplished, as well as an effective method in place for measuring whether or not these projects are producing a desired effect.

   - Second, it will be important to establish clear lines of authority for managing projects as integrated "portfolios", or in an integrated fashion. In the case of New York, the Czar does not have authority over budgets or plans, which impacts her ability to hold FAA lines of business accountable for the timely accomplishment of tasks.

   - Third, FAA must establish an effective exit strategy to report projects as complete and delivering expected benefits.

6. Mr. Scovel, what are your thoughts on the near-term outlook for delays and what can air travelers expect this summer?

   Answer: Barring extended severe weather this summer, we expect to see reductions in the number of delayed flights nationwide and a reduction in airline schedules. Although delays nationwide will decrease, we anticipate smaller declines in delays at historically congested airports, such as Newark, LaGuardia, Kennedy, Miami, and Philadelphia. In addition, one airport, Atlanta, may actually experience more delays because it is projected to see an increase in air traffic this summer.

7. Mr. Scovel, Kate Hanni stated the following in her written testimony regarding passenger deplanement, "The DOT's Inspector General also favors a set time limit. In previous testimony, he said, 'We think it is unlikely that passengers' definition of an extended period of time will vary depending upon which airline they are flying. We are still of the view that a consistent policy across the airlines would be helpful to passengers.'" Was this statement accurate? Please clarify.

   Answer: No. Ms. Hanni's statement refers to a time limit on delay durations before deplaning passenger. The context of the quote Ms. Hanni references from our April 9, 2008 testimony before this Subcommittee relates to trigger thresholds for "meeting passengers' essential needs" during long, on-board delays.

   In our April 2008 testimony, we stated that the ATA member airline's trigger thresholds for meeting passengers' essential needs vary from a half-hour to 2 hours on arrival and from 1.5 hours to 3 hours on departure. We think it is unlikely that passengers' definition of an extended period of time will vary depending upon which airline they are flying. We are still of the view that a consistent policy across the airlines would be helpful to passengers.

   With regard to deplaning passengers, we have cautioned against a "one size fits all" policy. Yet, we note in our May 2009 statement that the task force guidance could have recommended an acceptable time-limit range on delay durations before deplaning passengers, such as 3 to 5 hours. Based on our analysis of the ATA member airlines' policies, we found that most choose to wait between 1 and 5 hours before deplaning passengers caught in an on-board delay. In our opinion, on-board delays in excess of 5 hours should be preventable unless an event that triggers such an extended period of time is truly extraordinary and involves protecting the safety or security of passengers.

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